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**BEFORE THE ARIZONA CORPORATION**

**COMMISSIONERS**

TOM FORESE – Chairman  
BOB BURNS  
ANDY TOBIN  
BOYD DUNN  
JUSTIN OLSON

Arizona Corporation Commission

**DOCKETED**

**MAY 22 2018**

**DOCKETED BY**

*[Signature]*

IN THE MATTER OF:

VISIONARY BUSINESS WORKS, INC., d/b/a  
FLEETRONIX, an Arizona corporation,

ROBERT BRIAN BRAUER and MELISSA  
BRAUER, husband and wife,

TIMOTHY JOHN WALES and STACEY WALES,  
husband and wife.

Respondents.

DOCKET NO. S-20976A-16-0210

DECISION NO. 76683

**OPINION AND ORDER**

DATE OF PRE-HEARING CONFERENCE: August 10, 2016

DATES OF HEARING: March 27, 2017  
March 28, 2017  
March 29, 2017

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Mark Preny<sup>1</sup>

APPEARANCES: Mr. Norman C. Keyt, on behalf of Timothy John  
Wales and Stacey Wales;

Mr. Michael A. Troncellito, TRONCELLITO  
LAW, on behalf of Robert Brian Brauer and  
Melissa Brauer; and

Mr. Paul Kitchin, Staff Attorney, on behalf of the  
Securities Division of the Arizona Corporation  
Commission.

**BY THE COMMISSION:**

**Procedural History**

On June 29, 2016, the Securities Division (“Division”) of the Arizona Corporation Commission

<sup>1</sup> Administrative Law Judge Mark Preny presided over all proceedings in this matter. Administrative Law Judge Yvette B. Kinsey drafted the Recommended Opinion and Order (“ROO”).

1 (“Commission”) filed a Temporary Order to Cease and Desist (“TO”) and Notice of Opportunity for  
2 Hearing (“Notice”) against Visionary Business Works, Inc., d/b/a Fleetronix (“Visionary”), Robert  
3 Brian Brauer and Melissa Brauer, husband and wife (the “Brauers”), and Timothy John Wales and  
4 Stacey Wales, husband and wife, (the “Wales”) (collectively “Respondents”) in which the Division  
5 alleged violations of the Arizona Securities Act (“Act”) in connection with the offer and sale of  
6 securities in the form of corporate stock.

7       The spouse of Robert Brian Brauer, Melissa Brauer (“Respondent Spouse”), is joined in the  
8 action pursuant to Arizona Revised Statutes (“A.R.S.”) § 44-2031(C) solely for determining the  
9 liability of the marital community.

10       The Respondents were duly served with a copy of the TO and Notice.

11       On July 18, 2016, Respondent Timothy John Wales filed a Request for Hearing pursuant to  
12 A.R.S. § 44-1972 and Arizona Administrative Code (“A.A.C.”) R14-4-307.

13       On July 22, 2016, by Procedural Order, a pre-hearing conference was scheduled for August 10,  
14 2016.

15       On July 29, 2016, the Wales Respondents filed an Answer.

16       On August 8, 2016, the Division filed its Consent to Email Service.

17       On August 10, 2016, a pre-hearing conference was held as scheduled. The Division and the  
18 Wales Respondents were represented by counsel. Discussions were held regarding proposed hearing  
19 dates for this matter. Also on the same date, by Procedural Order, the Division’s request to consent to  
20 email service was granted and a hearing in this matter was scheduled to commence on January 30,  
21 2017.

22       On December 7, 2016, the Wales Respondents filed a Motion for Order Permitting Prehearing  
23 Depositions. The Wales Respondents’ Motion requested the depositions of Javier Cano, Jorge De Las  
24 Casas, John Warren, Robert Brauer, Tammi Wight and J.W. Wight (the “Wights”). The Wales  
25 Respondents’ Motion also sought the depositions of Messrs. Cano, and De Las Casas and the Wights  
26 as they were shareholders in Visionary. Further, the Wales Respondents’ Motion also stated that they  
27 needed the deposition of Respondent Brauer to discover what representations he had made to the  
28 Wights.

1 On the same date, the Wales Respondents filed a Motion to Continue Hearing, for at least sixty  
2 days, to allow additional time to conduct prehearing depositions in this matter.

3 On December 12, 2016, the Division filed a Response to the Wales Respondents' Motion for  
4 Order Permitting Prehearing Depositions. The Division opposed the motion, stating that the Wales  
5 Respondents had failed to demonstrate a reasonable need for the requested depositions, as required by  
6 A.R.S. § 41-1062(A)(4).

7 Also on December 12, 2016, the Division filed a Response to Motion to Continue Hearing. The  
8 Division opposed the Wales Respondents' Motion, stating that the Wales Respondents had not  
9 established good cause for a continuance of the hearing under A.A.C. R14-3-109(Q).

10 On December 16, 2016, the Wales Respondents filed a Witness and Exhibit List.

11 On December 19, 2016, the Wales Respondents filed their Reply to Securities Division  
12 Opposition to Motion to Depose Witnesses, asserting that Respondent Brauer embezzled nearly  
13 \$250,000 from Visionary; they did not know what financial statements Respondent Brauer gave to the  
14 Wights; they would be subject to surprise at hearing if not afforded an opportunity to depose the  
15 Wights; and a prehearing deposition of Respondent Brauer would be critical to their defense on fraud  
16 charges. In their Reply, the Wales Respondents also voluntarily withdrew their request to depose  
17 Messrs. Cano, De Las Casas, and Warren.

18 On December 22, 2016, by Procedural Order, the Wales Respondents' Motion to Continue  
19 Hearing was granted as well as their request to conduct prehearing depositions of Robert Brauer,  
20 Tammi Wight and JW Wight. The hearing in this matter was rescheduled to commence on March 27,  
21 2017, and other procedural deadlines were modified.

22 On January 19, 2017, a Notice of Appearance was filed by Michael A. Troncellito, Jr., as  
23 counsel of record for Respondents Robert Brian Brauer and Melissa Brauer.

24 Also on January 19, 2017, the Brauer Respondents filed an Answer to the TO and Notice.

25 On the same date, Brauer Respondents filed a Motion to Depose Visionary, Respondents  
26 Timothy John Wales and Stacey Wales, and Persons Identified in the Commission's Pleadings as J.C.,  
27 J.D.L.C., J.W.W., and T.W.

28 On January 23, 2017, the Division filed a Response to Respondents Brauers' Motion to Depose,

1 requesting that the Motion to Depose be denied.

2 On February 1, 2017, the Wales Respondents filed a Request for Subpoena Duces Tecum with  
3 Testimony for James William "JW" Wight and Tammi Wight.

4 On February 7, 2017, by Procedural Order, the Brauer Respondents' Motion to Depose was  
5 granted in part, and denied, in part. The Procedural Order approved the Brauers' request to conduct  
6 prehearing depositions of Visionary and Respondents Timothy Wales and Stacey Wales. The  
7 Procedural Order also allowed the Wales Respondents to conduct prehearing depositions of Robert  
8 Brauer, Tammi Wight and J.W. Wight. The Procedural Order denied the Wales Respondents' request  
9 for Subpoena Duces Tecum with testimony of Tammi Wight and J.W. Wight.

10 On February 13, 2017, the Brauer Respondents filed a Motion for Leave to Discover Bank  
11 Records Pertaining to the Operations of Visionary and/or in the Name Timothy Wales, Stacey Wales,  
12 and/or Stacey and Timothy Wales at All Times Relevant to this Matter.

13 On that same date, Respondent Brauer filed a List of Witnesses and Exhibits.

14 On February 15, 2017, the Division filed its Response to the Brauer Respondents' Motion for  
15 Leave to Discover Bank Records, requesting that the Brauer's Motion be denied because the Brauers'  
16 had failed to demonstrate a reasonable need for the requested bank records in accordance with A.R.S.  
17 § 41-1062(A)(4).

18 On February 21, 2017, Respondent Brauer filed a Reply to the Division's Response to Brauer's  
19 Motion for Leave to Discover Bank Records.

20 Also on the same date, Respondent Brauer filed a Supplemental List of Exhibits.

21 On February 22, 2017, the Wales Respondents filed a Response to the Brauer's Motion for  
22 Leave to Discover Bank Records.

23 On February 24, 2017, by Procedural Order, the Brauer Respondents' Motion for Leave to  
24 Discover Bank Records was denied.

25 On March 6, 2017, the Brauer Respondents filed a Motion for Leave to Provide Telephonic  
26 Hearing Testimony from a Remote Location. The Motion stated that neither the Division nor the Wales  
27 Respondents were opposed the Motion.

28 On March 10, 2017, by Procedural Order, the Brauer Respondents' Motion for Leave to Provide



1 Telephonic Hearing Testimony from a Remote Location was granted.

2 Also on March 10, 2017, the Division filed a Motion to Allow Telephonic Testimony requesting  
3 leave to present the telephonic testimony of J.W. Wight and Tammi Wight at the hearing. The Division  
4 stated that the Brauer Respondents did not object to the Motion to Allow Telephonic Testimony.

5 On March 17, 2017, the Brauers filed a Motion in Limine to Preclude S-11, S-12, and S-36  
6 through S-47 as evidence at the hearing.

7 On the same date, by Procedural Order, a procedural conference was scheduled for March 23,  
8 2017, to discuss the Brauer Respondents' Motion in Limine and the Division's Motion to Allow  
9 Telephonic Testimony.

10 On March 21, 2017, the Division filed a Response to the Brauer Respondents' Motion in  
11 Limine, requesting that the Brauer's Motion in Limine to preclude S-11, S-12, and S-36 through S-47  
12 be denied.

13 On March 22, 2017, the Division filed an Amended Response to Respondents Brauers' Motion  
14 in Limine, stating the Division filed the first page of its Response in error and that the Division no  
15 longer seeks the admission of the exhibits that the Brauers object to in the Motion.

16 Also on March 22, 2017, the Wales Respondents filed a Supplemental Exhibit List.

17 On March 23, 2017, a procedural conference was held as scheduled, with the Division and  
18 Respondents appearing telephonically through counsel. During the conference, the Division's Motion  
19 to Allow Telephonic Testimony for J.W. Wight and Tammi Wight was granted as well as the Brauer  
20 Respondents' Motion in Limine.

21 On March 27, 2017, a full public hearing was commenced before a duly authorized  
22 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division and the  
23 Wales Respondents were represented by counsel.<sup>2</sup> During the hearing, the Wales Respondents  
24 requested additional hearing date(s) to allow time to subpoena and depose Respondent Brauer. Counsel  
25 for the Wales Respondents stated that they had anticipated that the Division would call Respondent  
26 Brauer as a witness and therefore the Wales Respondents had not subpoenaed Respondent Brauer. Over  
27

28 <sup>2</sup> The Brauers and their counsel did not appear for the hearing because the Division reached a consent agreement with Respondent Brauer before the start of the hearing. Tr. at 8.

1 the Division's objection, the Wales Respondents' request for additional time to subpoena and depose  
2 Respondent Brauer was granted and a status conference was scheduled for April 3, 2017, to discuss the  
3 Wales Respondents' progress in obtaining a subpoena for Respondent Brauer.

4 On April 3, 2017, a status conference was held as scheduled.<sup>3</sup> The Division and the Wales  
5 Respondents appeared through counsel. At the conference, counsel for the Wales Respondents stated  
6 that they had decided not to subpoena Respondent Brauer as a witness for the case. Counsel for the  
7 Wales Respondents stated that he had received a letter from Respondent Brauer's attorney, stating that  
8 his client would not testify and if subpoenaed he would plead the Fifth Amendment and would not  
9 provide substantive testimony in this matter if called by the Wales Respondents. Counsel for the Wales  
10 Respondents further stated that based on that information his clients would not be calling Respondent  
11 Brauer as a witness and that his clients would not be putting forth any additional evidence in this matter.  
12 Based on the discussions, the Division rested its case-in-chief and a briefing scheduled was determined.

13 On May 17, 2017, the Division filed its Post-Hearing Brief.

14 On May 22, 2017, the Commission issued Decision No. 76077, approving an Order to Cease  
15 and Desist and Order for Administrative Penalties and Consent to Same By Respondents Robert Brian  
16 Brauer and Melissa Brauer.<sup>4</sup>

17 On the same date, the Commission issued Decision No. 76078, approving an Order to Cease  
18 and Desist, Order for Restitution, and Order for Administrative Penalties for Respondent Visionary.<sup>5</sup>

19 On June 16, 2017, the Wales Respondents filed their Post-Hearing Brief.

20 On June 29, 2017, the Division filed its Reply Brief.

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22 ...

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24 <sup>3</sup> Tr. 90: 2-25.

25 <sup>4</sup> In Decision No. 76077 (May 22, 2017), the Commission approved an Order to Cease and Desist and Order for  
26 Administrative Penalties and Consent to Same by: Respondents Robert Brian Brauer and Melissa Brauer. The Decision  
ordered Respondent Robert Brauer individually and the marital community of Respondents Robert Brauer and Melissa  
Brauer, jointly and severally to pay an administrative penalty in the amount of \$10,000 for violations of the Act. Therefore,  
this Decision will only address the allegations raised by the Division against the Wales Respondents.

27 <sup>5</sup> The Commission issued a default Order against Respondent Visionary Business Inc. jointly and severally with all  
28 Respondents against whom orders are entered in the above-captioned docket requiring, among other things, to pay  
restitution in the principal amount of \$526,500, plus interest at 10 percent per annum and in addition, interest in the amount  
of \$304,544.79 having accrued for the timeframe up to May 9, 2017.

**DISCUSSION****I. Brief Summary**

This matter comes before the Commission as an enforcement action brought against the Wales Respondents, for alleged violations of the Act. The Division alleges that through the sale of stock, in Visionary, to three investors, the Wales Respondents offered and sold unregistered securities within Arizona, while not registered as dealers or salesmen, pursuant to A.R.S. §§ 44-1841 and 44-1842. The Division does not allege that the Respondent Wales committed fraud as set forth in A.R.S. §44-1991.<sup>6</sup>

Pursuant to A.R.S. §§ 44-1801(15) and (26), the Division alleges that the Wales Respondents offered and sold 10 percent shares in Visionary to each of Messrs. Cano and De Las Casas in consideration of their individual contributions in the amount of \$113,250, for a total of \$226,500. The Division further alleges that the Wales Respondents offered and sold 25 percent of Visionary's shares to the Wights in consideration of their contribution in the amount of \$300,000. The Division alleges that the total amount of \$526,500 was collected by the Wales Respondents in exchange for shares in Visionary. The Division alleges that pursuant to A.R.S. §44-1801(26) Visionary's stock is a security; Visionary's subscription agreements expressly identify its shares as a security; and all of Visionary's stock was sold in Arizona and the Wights lived in Arizona at the time they invested. The Division further alleges that Respondent Stacey Wales sold Visionary's stock to the three investors by executing subscription agreements with the investors as described in A.R.S. §44-1801(21). The Division also alleges that the stock in Visionary was offered for value as described in A.R.S. §44-1801 (15) because Respondent Timothy John Wales "offered Visionary's stock to the Wights by expressly asking them to invest and by attempting to dispose of Visionary's stock for value by telling the Wights about favorable sales projections to encourage them to invest."<sup>7</sup> Likewise, the Division alleges that the Wales Respondents "offered Visionary's stock to Messrs. Cano and De Las Casas for value by talking to them about becoming Visionary shareholders in lieu of repayment of their monetary contributions and by approving them to become shareholders."<sup>8</sup>

The Division alleges that pursuant to A.R.S. §44-2033 Respondents failed to meet the burden

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<sup>6</sup> Tr.12:24-25.

<sup>7</sup> Division Initial Brief at 11.

<sup>8</sup> *Id.*

1 of proof that Visionary's stock was exempt from registration with the Commission under the Non-  
2 Public Offering Exemption, as set forth in A.R.S. §44-1844(A)(1).

3 The Wales Respondents contend that the sale of stock was not in violation of A.R.S. §44-1842  
4 because the sales were exempt pursuant to A.R.S. §44-1842 and was not a public offering. The Wales  
5 Respondents also argue that there was only one stock sale and that sale was to the Wights. The Wales  
6 Respondents contend that the stock given to Messrs. Cano and De Las Casas were gifts.

7 The Division requests that the Commission order the Wales Respondents jointly and severally  
8 pay restitution in the amount of \$526,500, plus pre-judgment interest from July 27, 2011, the date of  
9 each investor's subscription agreement; pay administrative penalties of not more than \$5,000 for each  
10 violation of the Act; and the Division recommends that the Wales Respondents to each pay an  
11 administrative penalty of \$25,000. The Division also requests that the Commission order the Wales  
12 Respondents to cease and desist from further violations of the Act, pursuant to A.R.S. §44-2032 and  
13 that the marital community of the Wales Respondents be subject to any order of restitution,  
14 administrative penalties, or appropriate affirmative action pursuant to A.R.S. §25-215.

15 **II. Uncontested Facts<sup>9</sup>**

16 The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona  
17 Constitution and the Act, A.R.S. §44-1801 *et seq.*

18 Visionary is a defunct corporation that was organized under the laws of Arizona. Visionary  
19 was in operation from April 30, 2007, to October 7, 2015. Visionary was headquartered in Chandler,  
20 Arizona and never had offices outside of Arizona. Visionary specialized in cloud-based fleet  
21 management solutions and did business under the name Fleetronix.

22 At all relevant times, the Wales Respondents were married and resided in Arizona. Respondent  
23 Stacey Wales served as Visionary's president and owned at least 51 percent of Visionary's stock, and  
24 Respondent Timothy John Wales served as vice-president. The Wales Respondents, at all relevant  
25 times, were acting for their own benefit and for the benefit or in furtherance of their martial community.

26 In March of 2009, the Wales Respondents began building the software for Visionary's fleet  
27

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28 <sup>9</sup> The following facts were admitted by the Respondents in their Answers.

1 management system.

2 Respondent Brauer is a married man who was a resident of Arizona from at least December  
3 2010 to May 2012. Respondent Brauer was the chief financial officer ("CFO") for Visionary from  
4 December 2010 to May 2012. Respondent Brauer has not been registered by the Commission as a  
5 securities salesman or dealer.

6 At all relevant times, Respondent Melissa Brauer has been the spouse of Respondent Brauer  
7 ("Respondent Spouse"). Respondent Spouse Melissa Brauer is joined in this action under A.R.S. §44-  
8 2013 (C) solely for determining the liability of the marital community.

9 At some point during the relevant time period, the Wales Respondents were introduced to Javier  
10 Cano and Jorge De La Casas. Messrs. Cano and De Las Casas became customers of Visionary and in  
11 2009 they asked for and received a license to sell the Fleetronix software internationally. Messrs. Cano  
12 and De Las Casas became friends with the Wales Respondents. In July 2011, Messrs. Cano and De  
13 Las Casas each became shareholders in Visionary.

14 John W. Wight and Tammi Wight ("the Wights"), a married couple, also invested in Visionary.  
15 The Wights were friends of Respondent Brauer. Respondent Brauer discussed investing in Visionary  
16 with the Wights in their home.

17 The Wales Respondents and Respondent Brauer participated in a phone call with the Wights.

18 In July 2011, the Wights invested \$300,000 and received 25 percent of Visionary's common  
19 stock. Respondent Timothy John Wales signed the subscription agreements for the stock purchase  
20 dated July 27, 2011, and Respondent Stacey Wales signed the subscription agreements on behalf of  
21 Visionary.

22 The Wales Respondents were interested in finding other investors for Visionary, including  
23 family and friends.

24 Because of a lack of funds, Visionary eventually defaulted on a secured commercial loan and  
25 all of Visionary's assets were seized. The investors have not received any of their investment funds  
26 back.

27 Visionary was never registered by the Commission as a securities salesman or dealer. The  
28 Wales Respondents were not registered by the Commission as securities salesmen or dealers.



1 **III. Witness Testimony**

2 Shareholders Javier Cano and Jorge De Las Casas did not give testimony during the hearing.

3 **JW Wight (investor)**<sup>10</sup>

4 Mr. Wight is the owner and managing member of Strategic Benefits, an insurance agency.<sup>11</sup>

5 Mr. Wight testified that he is a graduate of Kansas State University, with a Bachelor's of Science in  
6 Communications.<sup>12</sup> Mr. Wight testified that he's been in the insurance business since 1997.<sup>13</sup>

7 Mr. Wight stated that he first became familiar with Visionary because he handled insurance for  
8 the company.<sup>14</sup> He testified that his insurance company provided medical, dental, and vision insurance  
9 to Visionary.<sup>15</sup> Mr. Wight testified that the first time he heard about Visionary was through Respondent  
10 Brauer.<sup>16</sup> Mr. Wight stated that he knew Respondent Brauer because he "worked as a controller, human  
11 resources person" for a client of Mr. Wight's and that Mr. Wight knew Respondent Brauer had left his  
12 clients' company to go work for Visionary.<sup>17</sup>

13 Mr. Wight indicated that he learned of the possibility of investing in Visionary sometime in  
14 2011 from Respondent Brauer.<sup>18</sup> Mr. Wight stated that at the time he began talks with Respondent  
15 Brauer about investing in Visionary, Respondent Brauer was a friend, they had played golf together in  
16 the Protective Cup for several years, and that he had played golf ten to twelve times with Respondent  
17 Brauer since they first met.<sup>19</sup>

18 Mr. Wight testified that he had a meeting with Respondent Brauer at his home in Scottsdale,  
19 Arizona, to discuss investing in Visionary.<sup>20</sup> Mr. Wight testified that at the meeting neither of the Wales  
20 Respondents were physically present, but that Respondent Timothy Wales joined the meeting via  
21

22 <sup>10</sup> Mr. Wight testified on behalf of the marital community even though his spouse Tammi Wight was the actual shareholder  
23 in Visionary. Mr. Wight testified that his spouse was the shareholder because he believed he may have a conflict of interest  
because he sold Visionary health insurance. Mr. Wight further testified that he considered himself an investor because  
Arizona is a community property state. Tr. 36: 1-25; 64: 21-25.

24 <sup>11</sup> Tr. 37: 5-10.

25 <sup>12</sup> Tr. 72: 15-21.

26 <sup>13</sup> Tr. 73: 1-3.

27 <sup>14</sup> Tr. 25: 2-7.

28 <sup>15</sup> Tr. 34: 16-25.

<sup>16</sup> Tr. 25:8-10.

<sup>17</sup> Tr. 25: 8-14.

<sup>18</sup> Tr. 25: 15-25.

<sup>19</sup> Tr. 26: 1-4; 45: 5-12.

<sup>20</sup> Tr. 26:12-15; 27: 1-7.



1 telephone.<sup>21</sup> He also testified that Respondent Brauer brought a computer with a spreadsheet to the  
 2 meeting and that the spreadsheet showed “projections of growth.”<sup>22</sup> Mr. Wight testified that he doesn’t  
 3 believe he received a copy of the spreadsheet before he invested in Visionary.<sup>23</sup> Mr. Wight also testified  
 4 that subsequent to the meeting at his home, he had several phone calls with Respondent Timothy Wales  
 5 and Respondent Robert Brauer.<sup>24</sup> Mr. Wight also testified that Messrs. Brauer or Wales never discussed  
 6 investment risks with him before he invested.<sup>25</sup>

7 Prior to investing in Visionary, Mr. Wight indicated that Visionary may have had a problem  
 8 paying its insurance premiums and that the fact that they could not pay their premiums could suggest  
 9 that Visionary was having cash flow problems.<sup>26</sup> Mr. Wight also indicated that he remembered seeing  
 10 a balance sheet showing that Visionary had no net income in July 2011, and it projected that in August  
 11 Visionary would have a net income of negative \$53,000.<sup>27</sup>

12 Mr. Wight testified that he invested \$300,000 in Visionary via wire transfer.<sup>28</sup> Mr. Wight also  
 13 testified that Messrs. Wales and Brauer wanted him to invest as soon as possible.<sup>29</sup> Mr. Wight testified  
 14 that [Messrs. Brauer and Wight] said, “they had some other investors that were going to be putting a  
 15 lot of money in, so we’re going to get a million dollars back for that 300 [thousand] and then maintain  
 16 four percent shares” in Visionary.<sup>30</sup> Mr. Wight testified that his spouse executed a subscription  
 17 agreement<sup>31</sup> and shares buyback agreement<sup>32</sup> in relation to their \$300,000 investment.<sup>33</sup>

18 Mr. Wight testified that before he invested he was not told the price per share for other investors  
 19 or whether or not an attorney had reviewed the legality of the investment.<sup>34</sup> Mr. Wight further testified  
 20 that before he invested he could not remember any one from Visionary asking him his net worth or  
 21

22 <sup>21</sup> Tr. 28: 18-20; Tr. 46: 8-17.

23 <sup>22</sup> Tr. 27: 16-25.

24 <sup>23</sup> Tr. 28: 25; 29:1-5.

25 <sup>24</sup> Tr. 46: 18-25

26 <sup>25</sup> Tr. 37: 14-19.

27 <sup>26</sup> Tr. 44: 6-25; Ex. W-22.

28 <sup>27</sup> Tr. 50: 1-25; Ex. W-28.

29 <sup>28</sup> Tr. 36: 23-25; 37: 1-2.

30 <sup>29</sup> Tr. 30: 20-21.

31 <sup>30</sup> Tr. 30: 20-25; 31:1-4.

32 <sup>31</sup> Ex. S-7.

33 <sup>32</sup> Ex. W-27.

34 <sup>33</sup> Tr. 65: 1-25; 67: 1-25; Ex. W-26; Ex. W- 27.

<sup>34</sup> Tr. 37:20-25; 38: 1-6.

1 annual income.<sup>35</sup> Mr. Wight testified that at the time of his investment in Visionary his net worth was  
 2 less than \$1 million.<sup>36</sup> Mr. Wight also testified that prior to investing in Visionary he had never made  
 3 any other self-directed investments.<sup>37</sup> Mr. Wight testified that he had no experience as a business  
 4 lender.<sup>38</sup> Mr. Wight testified that he had no attorney advising him at the time he invested in Visionary  
 5 and that he did not remember telling Messrs. Wales or Brauer that he had an attorney advising him.<sup>39</sup>

6 Mr. Wight indicated that he was unaware Visionary had other investors until after he invested  
 7 and was attending the first board meeting.<sup>40</sup>

8 Mr. Wight testified that has never received repayment for any part of his \$300,000 investment.<sup>41</sup>

9 **Respondent Stacey Wales (Visionary President)**

10 Respondent Stacey Wales testified that she and Respondent Timothy Wales created Visionary  
 11 and that Respondent Timothy Wales is her husband.<sup>42</sup> She also testified that she was the president of  
 12 Visionary and that Respondent Timothy Wales was vice president of sales and marketing.<sup>43</sup>

13 Respondent Stacey Wales testified that Visionary had a program with Verizon that gave  
 14 Visionary access to Verizon's sales force to sell Visionary's fleet management product.<sup>44</sup> According to  
 15 Respondent Stacey Wales, Verizon's salesforce, during its business sales would present Visionary's  
 16 fleet management product as an option to companies that needed to track vehicles or remote assets.<sup>45</sup>  
 17 Respondent Stacey Wales stated that when the fleet tracking product was sold, Visionary would install  
 18 its hardware in the vehicle along with a Verizon SIM card, so that companies could track information  
 19 about the vehicle, using the Verizon network.<sup>46</sup> Respondent Stacey Wales testified that Visionary could  
 20 not keep up with orders from Verizon because the Company did not have the money to pay for the  
 21 manufacturing of the hardware needed to meet customer demands.<sup>47</sup>

22 <sup>35</sup> Tr. 38: 16-18.

23 <sup>36</sup> Tr. 38: 19-25.

24 <sup>37</sup> Tr. 74: 8-11.

25 <sup>38</sup> Tr. 87: 12-15.

26 <sup>39</sup> Tr. 67: 22-25; 68: 1-5.

27 <sup>40</sup> Tr. 41:18-25; 42:1-18.

28 <sup>41</sup> Tr. 37: 11-13.

<sup>42</sup> Tr. 93: 1-6.

<sup>43</sup> Tr. 93: 7-14.

<sup>44</sup> Tr. 346: 15-25.

<sup>45</sup> Tr. 347: 11-17.

<sup>46</sup> Tr. 347-348.

<sup>47</sup> Tr. 348-349.

Respondent Stacey Wales testified that Respondent Brauer came to work for Visionary in approximately December of 2010 and worked for the company for approximately a year and a half.<sup>48</sup> Respondent Stacey Wales testified that Respondent Timothy Wales had previously worked with Respondent Brauer at a company called Flexprint in approximately 2007.<sup>49</sup> Respondent Stacey Wales testified that during the time Respondent Brauer and Respondent Timothy Wales were coworkers, and they lived a couple of miles from each other, and the couples would visit each other's homes for game nights together.<sup>50</sup> Respondent Stacey Wales further testified that Respondent Timothy Wales left Flexprint in approximately 2008 prior to starting Visionary in 2009 and Respondent Brauer stayed at Flexprint.<sup>51</sup> Respondent Stacey Wales testified that she and Respondent Timothy Wales moved to Chandler, Arizona, when they started Visionary and did not see Respondent Brauer and his wife anymore.<sup>52</sup> Respondent Stacey Wales testified that after Visionary had been going for about eight months, Respondent Timothy Wales reached out to Respondent Brauer to see if he was interested in being Visionary's CFO, which was the same role that he had been in with Flexprint.<sup>53</sup>

Respondent Stacey Wales testified that Respondent Brauer was not tasked with finding funding when he was hired.<sup>54</sup> Respondent Stacey Wales also stated that in the late winter of 2011, to make payroll and to cover expenses, Respondent Brauer was asked to find loans for Visionary.<sup>55</sup> Respondent Stacey Wales stated that she believed the sources for loans included: The Small Business Association, traditional lending, bank loans, convertible debt, friends, and family.<sup>56</sup>

Respondent Stacey Wales stated that Visionary had systems in place to check Respondent Brauer's accounting for the company.<sup>57</sup> Respondent Stacey Wales also stated that based on her belief that Respondent Brauer had committed theft against Visionary, she filled out a police report alleging that Respondent Brauer had engaged in the "unauthorized use of funds."<sup>58</sup> In response to the question,

<sup>48</sup> Tr. 353-355.

<sup>49</sup> Tr. 353: 16-25; 354: 1-9

<sup>50</sup> Tr. 354:1-9.

<sup>51</sup> Tr. 354: 10-14.

<sup>52</sup> Tr. 354: 10-17.

<sup>53</sup> Tr. 354: 18-25; 355: 1-5.

<sup>54</sup> Tr. 137: 5-9.

<sup>55</sup> Tr. 139-139.

<sup>56</sup> Tr. 140: 19-25.

<sup>57</sup> Tr. 174: 2-25.

<sup>58</sup> Tr. 95: 1-25;

1 "... you believe that Respondent Brauer lied to you to hide his unapproved use of those funds, right?  
2 Respondent Stacey Wales answered, "I believe he lied."<sup>59</sup>

3 Respondent Stacey Wales testified that the initial meeting Respondent Brauer had with the  
4 Wights at their home occurred on July 11, 2011.<sup>60</sup> Respondent Stacey Wales testified that the meeting  
5 with the Wights was initiated because on that same day Visionary had been notified that its insurance  
6 was being cancelled for a second time.<sup>61</sup> Respondent Stacey Wales testified that "our insurance for the  
7 second time was being cancelled or we found that it was being cancelled, and we needed intervention  
8 or were seeking intervention from our insurance broker, who was JW [Mr. Wight] to intervene."<sup>62</sup>  
9 Respondent Stacey Wales stated that she believed that the impetus for the phone call Respondent  
10 Brauer made to Mr. Wight was to discuss Visionary's insurance being cancelled and to then have a  
11 conversation concerning the Company's problems.<sup>63</sup> Respondent Stacey Wales testified that "Rob  
12 [Respondent Brauer] had the communication with him [Mr. Wight]", "[Respondent Brauer] was the  
13 master of that relationship, or the point person for that relationship."<sup>64</sup>

14 Respondent Stacey Wales testified that between July 19 and 26, 2011, the discussion with Mr.  
15 Wight shifted from obtaining a bridge loan "to morphing into" a shareholder discussion.<sup>65</sup> Respondent  
16 Stacey Wales testified that she believed the bridge loan would be a short term loan of a year or less.<sup>66</sup>  
17 She stated that she believed the bridge loan would entail Visionary putting a note on the books and  
18 either making payments to repay over a certain term.<sup>67</sup> Respondent Stacey Wales testified that she did  
19 not directly speak to the Wights during the negotiation period, but relied on Respondent Brauer and  
20 Respondent Timothy Wales to relay the conversations to her.<sup>68</sup> Respondent Stacey Wales testified that  
21 she listened in on a conference call between Mr. Wight and Messrs. Wales and Brauer, where Mr.  
22 Wight had questions regarding the expenditures related to the Reddy Ice software and the patents for  
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24 <sup>59</sup> Tr. 96: 1-25.

25 <sup>60</sup> Tr. 114:1-9.

26 <sup>61</sup> *Id.*

27 <sup>62</sup> Tr. 113: 17-25; 114: 1-9.

28 <sup>63</sup> Tr. 113-114.

<sup>64</sup> Tr. 122-123.

<sup>65</sup> Tr. 215: 2-25.

<sup>66</sup> Tr. 353: 1-15.

<sup>67</sup> *Id.*

<sup>68</sup> Tr. 216. 2-23.

1 Reddy Ice.<sup>69</sup> Respondent Stacey Wales also testified that during the conference call Respondent  
 2 Timothy Wales invited Mr. Wight to be part of a conference call with Reddy Ice and that Respondent  
 3 Timothy Wales discussed the Verizon partnership with Mr. Wight.<sup>70</sup> During the conference call,  
 4 Respondent Stacey Wales testified that Respondent Brauer talked about the expenditures on a  
 5 spreadsheet, the amount of equity for Messrs. Cano and De Las Casas, and Mr. Wight's flexibility on  
 6 requesting 30 percent equity in Visionary.<sup>71</sup> Respondent Stacey Wales also testified that the  
 7 expenditures on the spreadsheet<sup>72</sup> represented the amount of cash in July 2011 that Visionary would  
 8 have assuming there was a \$500,000 equity investment and also reflected the Company's actual cash  
 9 balance of negative \$111 in July 2011.<sup>73 74</sup>

10 Respondent Stacey Wales testified that the Reddy Ice deal never came to fruition because in  
 11 April of 2012 Reddy Ice filed for Chapter 11 bankruptcy protection and Visionary was told that Reddy  
 12 Ice could no longer move forward with the pilot program.<sup>75</sup> Respondent Stacey Wales testified that  
 13 during that time, Visionary had sold a number of units under the Reddy Ice deal and that Visionary's  
 14 product was being used by Reddy Ice.<sup>76</sup> Respondent Stacey Wales stated that in July 2011, Visionary  
 15 had sold 429 units with Reddy Ice and that the Company needed to sell 900 units to breakeven.<sup>77</sup>  
 16 Respondent Stacey Wales testified that the units Visionary had in the field generated monthly  
 17 revenues.<sup>78</sup>

18 Respondent Stacey Wales disputed Mr. Wight's assertion that he was unaware of the amounts  
 19 of monies that had been attributed to Messrs. Cano and De Las Casas in exchange for their 10 percent  
 20 shares.<sup>79</sup> Respondent Stacey Wales testified that all potential shareholders were provided an electronic  
 21 copy of the subscription, shares buyback, shareholder agreements, and the unanimous written consent  
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23 <sup>69</sup> Tr. 372: 1-22; Exh. W-28.

24 <sup>70</sup> Tr. 372: 1-22; Exh. W-28.

25 <sup>71</sup> Tr. 373: 16-25; Exh. W-28.

26 <sup>72</sup> Exh. W-28.

27 <sup>73</sup> Tr. 377: 1-24.

28 <sup>74</sup> Tr. 378: 4-11; Exh. S-31

<sup>75</sup> Tr. 385: 1-25.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Tr. 386: 1-25; Exh. S-10.

<sup>79</sup> Tr. 210: 2-25.



1 of Visionary's board before they signed them.<sup>80</sup> Respondent Stacey Wales testified that the unanimous  
2 written consent document listed each of the shareholders names and the number of shares each was  
3 going to have.<sup>81</sup> Respondent Stacey Wales contends that the unanimous written consent document was  
4 provided to Mr. Wight prior to him signing it, and that his knowledge of what the other potential  
5 shareholders were receiving was the impetus for him to renegotiate his shares amount. Respondent  
6 Stacey Wales testified that the unanimous written consent document was the reason Mr. Wight  
7 negotiated 25 percent because he was trying to get the same ratio of shares with respect to the money  
8 being contributed by Messrs. Cano and De Las Casas.<sup>82</sup> Respondent Stacey Wales stated that Messrs.  
9 Cano and De Las Casas were upset that the Wights shareholder rate had been renegotiated to 25 percent  
10 because they had been on the journey to build the company for two years.<sup>83</sup> Respondent Stacey Wales  
11 testified that she and Respondent Timothy Wales lost their relationship with Messrs. Cano and De Las  
12 Casas because of Mr. Wight and that Messrs. Cano and De Las Casas "don't talk to them anymore."<sup>84</sup>

13 Respondent Stacey Wales testified that Mr. Wight was aware of Visionary's program with  
14 Verizon before he invested because the information was contained in Respondent Timothy Wales sales  
15 and pipeline reports given to the Wights.<sup>85</sup> Respondent Stacey Wales testified that Mr. Wight had  
16 questions about the Verizon sales pipeline and that those questions were answered.<sup>86</sup>

17 Regarding the investments in Visionary made by the Wights, Respondent Stacey Wales testified  
18 that she was not aware of the Wight's net worth, annual household income, or their investment  
19 experience at the time they invested.<sup>87 88</sup>

20 Respondent Stacey Wales stated that before Messrs. Cano and De Las Casas became investors  
21 in Visionary they were introduced as business acquaintances.<sup>89</sup> Respondent Stacey Wales testified that  
22 Messrs. Cano and De Las Casas "became customers of ours, then they became licensing partners with  
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24 <sup>80</sup> Tr. 205-208.

25 <sup>81</sup> Tr. 209-210.

26 <sup>82</sup> *Id.*

27 <sup>83</sup> Tr. 211: 2-13.

28 <sup>84</sup> Tr. 212: 4-19.

<sup>85</sup> Tr. 349:11-25.

<sup>86</sup> Tr. 351: 6-14.

<sup>87</sup> Tr. 97: 7-25.

<sup>88</sup> Tr. 98: 1-25.

<sup>89</sup> Tr. 123: 8-25.



us for just Mexico, then licensing partners with us for international, and then during this whole time, became godparents to our children at their first baptism. . .”<sup>90</sup> Respondent Stacey Wales testified that Messrs. Cano and De Las Casas “were shareholders, but they were not investors.”<sup>91</sup> Respondent Stacey Wales testified that Messrs. Cano and De Las Casas “started as partners, customers, [sic], friends, and supporters of the company, and then when it was, time to need to give equity to anybody else other than just me Tim [Respondent Timothy Wales], or to Rob [Respondent Brauer], they were considered as being part of the family and grandfathered in, [sic] before anybody else was brought in, and especially the impetus of having the Wights come in. . .”<sup>92</sup> Under cross examination, Respondent Stacey Wales agreed that the amount of consideration listed in the subscription agreements for Messrs. Cano and De Las Casas was derived by both she and Messrs. Cano and De Las Casas estimating the value of their contributions to Visionary to be about \$226,500 and that amount was credited to them and divided equally.<sup>93</sup> Respondent Stacey Wales testified that the decision to give Messrs. Cano and De Las Casas shares rather than some other compensation was because the company was not cash positive and did not have net profit, so the only thing they had to give was equity.<sup>94</sup>

Respondent Stacey Wales testified that she did not know Mr. Cano’s annual income during the times he gave money to Visionary or at the time he became a shareholder.<sup>95</sup> Respondent Stacey Wales also testified that neither she nor Respondent Timothy Wales knew what the actual amount of Mr. Cano’s net worth was at the time he became a shareholder or during the time he made payments to Visionary.<sup>96</sup> Respondent Stacey Wales further testified that during the time periods where Mr. Cano gave money to Visionary and became a shareholder neither she or Respondent Wales knew the level of Mr. Cano’s investment experience.<sup>97</sup>

Respondent Stacey Wales testified the she and Respondent Timothy Wales were led to believe Messrs. Cano and De Las Casas would be able to withstand the loss of their investment.<sup>98</sup> Respondent

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<sup>90</sup> Tr. 123:8-21.

<sup>91</sup> Tr. 124: 6-22.

<sup>92</sup> *Id.*

<sup>93</sup> Tr. 196-197.

<sup>94</sup> Tr. 200: 9-13.

<sup>95</sup> Tr. 126: 14-17.

<sup>96</sup> Tr. 124-125.

<sup>97</sup> Tr. 128: 17-21.

<sup>98</sup> Tr. 129-130.

1 Stacey Wales testified that Mr. Cano had indicated that the money “he was using was from an  
2 inheritance from his brother and that it was to be used to grow his, either, investment portfolio or to do  
3 something like that.”<sup>99</sup> Respondent Stacey Wales further testified that Mr. Cano’s inheritance was  
4 something that had recently come to him and that the inheritance was not something that he depended  
5 on for his daily living, because it was above and beyond income for him.<sup>100</sup>

6 Respondent Stacey Wales testified that at the time Mr. De Las Casas gave money to Visionary  
7 or at the time he received shares in Visionary, she and Respondent Timothy Wales did not know Mr.  
8 De Las Casas’ net worth.<sup>101</sup> Respondent Stacey Wales further testified that she and Respondent Wales  
9 also did not know Mr. De Las Casas’ annual salary and that she did not know his investment  
10 experience.<sup>102</sup> Regarding whether Mr. De Las Casas could withstand the loss of his investment,  
11 Respondent Stacey Wales testified that she and Respondent Timothy Wales were assured by Messrs.  
12 Cano and De Las Casas that they “helped out each other and that . . . their families had been friends  
13 back in Mexico for a very long time, and that they had gone through years of businesses with  
14 involvement together.”<sup>103</sup> Respondent Stacey Wales further testified that she and Respondent Timothy  
15 Wales were led to believe that if Mr. De Las Casas lost all the money that he gave to Visionary “that  
16 his businesses may be impacted, but not his life or lifestyle.”<sup>104</sup>

17 Respondent Stacey Wales testified that beginning on or about December 2010, Respondent  
18 Timothy Wales had been in discussions with potential investors Messrs. Tom Shaw and Jerry Cook  
19 about investing in Visionary.<sup>105</sup> Respondent Stacey Wales testified that Tom Shaw and Jerry Cook  
20 owned a company called CJC Construction and that their offices were located next door to Visionary.<sup>106</sup>  
21 Respondent Stacey Wales testified that due to the downturn in the economy in 2009/2010, Messrs.  
22 Shaw and Cook’s company was having a hard time.<sup>107</sup> Respondent Stacey Wales testified that Shaw  
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24 <sup>99</sup> Tr. 129: 12-20.

25 <sup>100</sup> Tr. 129: 20-24.

26 <sup>101</sup> Tr. 131: 2-13.

27 <sup>102</sup> Tr. 131: 1-25

28 <sup>103</sup> Tr. 132-133.

<sup>104</sup> Tr. 133: 12-19.

<sup>105</sup> Tr. 233-240.

<sup>106</sup> Tr. 234: 20-25.

<sup>107</sup> Tr. 233-240.

1 and Cook were real estate developers.<sup>108</sup> Respondent Stacey Wales testified that Respondent Timothy  
 2 Wales would go over to talk to Messrs. Shaw and Cook on his lunch hour or breaks.<sup>109</sup> Respondent  
 3 Stacey Wales testified that Respondent Brauer would also go over and talk with Messrs. Shaw and  
 4 Cook.<sup>110</sup> Respondent Stacey Wales testified that Respondent Wales talked to Messrs. Shaw and Cook  
 5 about becoming potential clients of Visionary.<sup>111</sup> Respondent Stacey Wales testified that Messrs. Shaw  
 6 and Cook were looking at diversifying their business.<sup>112</sup> Respondent Stacey Wales testified that in  
 7 early January 2011, discussions with Messrs. Shaw and Cook started to involve equity structures and  
 8 the discussions began to be documented.<sup>113</sup> Respondent Stacey Wales testified that Messrs. Shaw and  
 9 Cook were going to have access to more than \$10 million.<sup>114</sup> Respondent Stacey Wales testified that  
 10 Messrs. Wales, Brauer, Shaw, and Cook discussed creating additional companies.<sup>115</sup> Respondent  
 11 Stacey Wales testified that the Shaw/Cook deal “was like, not only the answer to Fleetronix’s success,  
 12 but this was a birth of a new idea(s), new company, new revenue streams, new wealth for the Chandler  
 13 area and new jobs.”<sup>116</sup> Respondent Stacey Wales testified that Messrs. Wales and Brauer were  
 14 “absolutely ecstatic over these possibilities.”<sup>117</sup> Respondent Stacey Wales testified that Messrs. Shaw  
 15 and Cook did not get the \$10 million and ultimately could not invest in Visionary.<sup>118</sup>

16 Respondent Stacey Wales testified that she did not know Mr. Tom Shaw’s income or his net  
 17 worth or his investment experience.<sup>119</sup> She further testified that she did not know Mr. Jerry Cook’s  
 18 income or net worth and did not recall the level of Mr. Cook’s investment experience.<sup>120</sup>

19 Respondent Stacey Wales testified that she believed the disclosure of risk in the shareholders  
 20 subscription agreement to be sufficient, having had it prepared by an attorney.<sup>121</sup> Respondent Stacey  
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22 <sup>108</sup> Tr. 233-240.

23 <sup>109</sup> *Id.*

24 <sup>110</sup> *Id.*

25 <sup>111</sup> *Id.*

26 <sup>112</sup> *Id.*

27 <sup>113</sup> *Id.*

28 <sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Tr. 240: 1-25.

<sup>117</sup> Tr. 242: 16-19.

<sup>118</sup> Tr. 251: 16-25.

<sup>119</sup> Tr. 359: 8-25.

<sup>120</sup> Tr. 361: 1-7.

<sup>121</sup> Tr. 164: 15-25.

1 Wales testified that when she and Messrs. Wales and Brauer met with their attorney to draw up the  
 2 shareholders agreement they explained to the attorney the relationship between Respondent Brauer and  
 3 Mr. Wight and how the relationship had “morphed” from a loan to a shareholder situation.<sup>122</sup>  
 4 Respondent Stacey Wales also testified that they had discussions with their attorney about wanting to  
 5 bring Messrs. Cano and De Las Casas on as shareholders.<sup>123</sup> Respondent Stacey Wales testified that  
 6 she did recall the topic of a registered security being suggested during the discussions with the attorney  
 7 because he believed that it was a friends and family type of arrangement.<sup>124</sup> Respondent Stacey Wales  
 8 also testified that the attorney did not express concerns to them over the shareholder and the  
 9 subscription agreement and that he felt confident that they were standard.<sup>125</sup> Respondent Stacey Wales  
 10 also stated that the attorney did not express that there could be a risk if they didn’t register the  
 11 shareholder and the shares buyback agreements.<sup>126</sup> Respondent Stacey Wales testified that the final  
 12 share buyback agreement was drafted to minimize the exposure to the company.<sup>127</sup> Respondent Stacey  
 13 Wales also stated that their attorney did mention that if they were to do a public offering they would  
 14 have to do certain things, but that the shareholder and shares buyback transaction was not a public  
 15 offering.<sup>128</sup>

16 Respondent Stacey Wales testified that investors were informed that Reddy Ice was only in a  
 17 test pilot stage and that Visionary did not have a signed contract to implement on a national scale.<sup>129</sup>  
 18 Respondent Stacey Wales also testified that investors were also provided the Letter of Intent (“LOI”)  
 19 from Tom Shaw and Jerry Cook and that it was simply a LOI and that it was not “a done deal” and not  
 20 a guarantee.<sup>130</sup>

21 Respondent Stacey Wales testified that the investment documents for the Wights and Messrs.  
 22 Cano and De Las Casas were all executed on July 27, 2011.<sup>131</sup> Respondent Stacey Wales testified that  
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24 <sup>122</sup> Tr. 388-392.

25 <sup>123</sup> Tr. 389: 1-25.

26 <sup>124</sup> Tr. 392:1-13.

27 <sup>125</sup> Tr. 393: 7-17.

28 <sup>126</sup> Tr. 394: 1-25

<sup>127</sup> *Id.*

<sup>128</sup> Tr. 395: 5-13.

<sup>129</sup> Tr. 352: 8-22.

<sup>130</sup> *Id.*

<sup>131</sup> Tr. 118-119.

1 all the financial documents prepared up to the July 29, 2011, date, had been previously provided to  
 2 Messrs. Wight, Cano, and De Las Casas.<sup>132</sup> Respondent Stacey Wales further testified that the  
 3 information had also been shared with the Wights prior to July 29, 2011, and that the information  
 4 provided to them on July 29, 2011, was a copy of everything that had been shared with them to that  
 5 point electronically.<sup>133</sup>

6 Respondent Stacey Wales testified that aside from the Wights, and Messrs. Cano and De Las  
 7 Casas, Visionary had discussed selling shares in Visionary to Messrs. Tom Shaw and Jerry Cook, and  
 8 in exchange for her and Messrs. Wales and Brauer receiving shares in the additional companies they  
 9 would create together.<sup>134</sup>

10 Respondent Stacey Wales testified that she and Respondent Timothy Wales didn't sit down and  
 11 have a discussion with Respondent Brauer that said do not employ these methods for finding new  
 12 capital for the company.<sup>135</sup> She also testified that she did not give guidance or limitations on the  
 13 methods Messrs. Wales, Cano, or De Las Casas could use to find capital for Visionary.<sup>136</sup>

14 Respondent Stacey Wales testified that the amount of consideration the investors paid was  
 15 never repaid and that the company never turned a profit.<sup>137</sup>

16 Regarding the Shaw/Cook deal, Respondent Stacey Wales testified that the Wights were aware  
 17 of who the investors were because they were shown the LOI from Shaw and Cook during discussions  
 18 about a bridge loan.<sup>138</sup>

19 Respondent Stacey Wales testified that the seat on Visionary's board was negotiated by Mr.  
 20 Wight.<sup>139</sup> Respondent Stacey Wales also testified that Mr. Wight also negotiated that voting would be  
 21 one vote per shareholder, rather than based on the shares percentage.<sup>140</sup> Respondent Stacey Wales  
 22 testified that this effectively took away any power that she had as 51 percent majority shareholder and  
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24 <sup>132</sup> Tr. 120: 1-25.

25 <sup>133</sup> Tr. 120: 1-25.

26 <sup>134</sup> Tr. 146: 4-25.

27 <sup>135</sup> Tr. 159-160.

28 <sup>136</sup> Tr. 161-164.

<sup>137</sup> Tr. 218: 8-25.

<sup>138</sup> Tr. 248: 8-25.

<sup>139</sup> Tr. 271:15-24.

<sup>140</sup> *Id.*

1 she was not in favor of that term.<sup>141</sup> Respondent Stacey Wales testified that after the shareholders were  
 2 brought onto the board they voted to change the shareholders agreement to one vote per shareholder.<sup>142</sup>

3 **Respondent Timothy John Wales (Vice-President of Visionary)**

4 Respondent Timothy Wales testified that he has no education in economics or finance and has  
 5 not had any specific investment training.<sup>143</sup>

6 Respondent Timothy Wales testified that he believes Respondent Brauer stole money from  
 7 Visionary.<sup>144</sup> Respondent Timothy Wales testified that he prepared and filed a police report outlining  
 8 the alleged theft by Respondent Brauer and that he had made an insurance claim for the alleged theft.<sup>145</sup>

9 Respondent Timothy Wales testified that believed it was not Respondent Brauer's intention to lie about  
 10 the theft, but that he got in "a little too deep and didn't know how to fix things."<sup>146</sup> Respondent Timothy  
 11 Wales testified that Respondent Brauer was not always honest in describing the Company's financial  
 12 situation [and] only [did so] when he was directly confronted on certain things we saw. . .<sup>147</sup>

13 Respondent Timothy Wales testified that Respondent Brauer disappeared.<sup>148</sup> Respondent Timothy  
 14 Wales testified that he did not become aware of Respondent Brauer's alleged theft until after  
 15 Respondent Brauer left Visionary.<sup>149</sup> Respondent Timothy Wales testified that he was not aware of  
 16 Respondent Brauer's actions before he left Visionary because he was focused on sales and building the  
 17 company and not on the financials.<sup>150</sup> Respondent Timothy Wales stated that Respondent Brauer  
 18 would regularly present financials to board members and partners about how the money was being  
 19 spent, but at some point the reports deviated from being run on the company's accounting system.<sup>151</sup>

20 Respondent Timothy Wales stated that he doesn't believe Respondent Brauer was preparing financials  
 21 for misrepresentation, but that there were journal entries that weren't shown and that he assumes they  
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23 <sup>141</sup> Tr. 272: 1-4; 344:16-25; S-10.

24 <sup>142</sup> Tr. 345:1-25.

25 <sup>143</sup> Tr. 489: 7-22.

26 <sup>144</sup> Tr. 399: 2-8.

27 <sup>145</sup> Tr. 399: 9-25.

28 <sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Tr. 400: 1-25.

<sup>150</sup> *Id.*

<sup>151</sup> Tr. 400: 1-25; 401: 1-25.



1 weren't being shown because Respondent Brauer was trying to hide them.<sup>152</sup> Respondent Timothy  
2 Wales further testified that he assumes Respondent Brauer intentionally hid the journal entries so that  
3 if his work was checked Respondent Timothy Wales would not see the money that Respondent Brauer  
4 was sending to himself.<sup>153</sup> Respondent Timothy Wales testified that Respondent Brauer was never  
5 proven guilty of theft.<sup>154</sup>

6 Respondent Timothy Wales testified that everyone associated with Visionary was out trying to  
7 grow the Company and build the Company.<sup>155</sup> He also testified that they were not putting  
8 memorandums out, they were not actively raising capital, but they were building relationships to build  
9 the business, and to understand how to build a small business.<sup>156</sup>

10 Respondent Timothy Wales stated that he assumed Respondent Brauer knew investors that he  
11 could approach when necessary because he knew Respondent Brauer's ability to do the financials at a  
12 company and watched the company go from no sales to sales of \$20 million per year.<sup>157</sup> Respondent  
13 Timothy Wales stated that at the time Respondent Brauer was hired Visionary was in desperate need  
14 of somebody to take over the financials, so that they could have the proper financial structure for an  
15 organization that was growing rapidly.<sup>158</sup>

16 Respondent Timothy Wales acknowledged that he did not actually know what was said by  
17 Respondent Brauer during conversations Respondent Brauer had with potential investors where he  
18 wasn't present.<sup>159</sup> Respondent Timothy Wales also stated that Visionary had a client relationship  
19 management system ("CRM") that was used to keep notes and contact information from a sales  
20 standpoint, but was not used to log contacts regarding raising capital.<sup>160</sup> Respondent Timothy Wales  
21 explained that the CRM system was for sales management and that Respondent Brauer would log  
22 information into the system if he found a contact that would be a good sales partner.<sup>161</sup>

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24 <sup>152</sup> Tr. 401: 3-25.

25 <sup>153</sup> Tr. 401: 1-25.

26 <sup>154</sup> *Id.*

27 <sup>155</sup> Tr. 409: 1-25.

28 <sup>156</sup> *Id.*

<sup>157</sup> Tr. 409-410; Tr. 422-423.

<sup>158</sup> Tr. 410: 1-25.

<sup>159</sup> Tr. 424: 1-25.

<sup>160</sup> Tr. 425-426.

<sup>161</sup> Tr. 427: 1-13.

1 Respondent Timothy Wales stated that he had never met Mr. Wight before he came to  
2 Visionary's office to obtain signatures for insurance policies for Visionary's employees on, or about,  
3 February 2011.<sup>162</sup> Respondent Timothy Wales stated that during the meeting with Mr. Wight,  
4 Respondent Stacey Wales and Respondent Brauer were present.<sup>163</sup> Respondent Timothy Wales  
5 testified that during the meeting Mr. Wight wanted a tour of the Visionary office and he wanted to  
6 understand the business.<sup>164</sup> Respondent Timothy Wales stated that during the tour he, Respondent  
7 Stacey Wales, and Respondent Brauer shared information about the research and development of a  
8 Reddy Ice pilot project with Mr. Wight.<sup>165</sup> In addition to the Reddy Ice pilot project, Respondent  
9 Timothy Wales stated that he discussed other pipeline projects like Rent-A-Center, and Oldcastle with  
10 Mr. Wight.<sup>166</sup>

11 Respondent Timothy Wales stated that regarding the initial meeting Mr. and Mrs. Brauer had  
12 with the Wights, Respondent Brauer told him that he was going to meet his friend JW [Mr. Wight] and  
13 his wife for dinner to discuss a possible loan and the Wight's interest in Fleetronix.<sup>167</sup> Respondent  
14 Timothy Wales testified that he and Respondent Brauer exchanged text messages later that night after  
15 the meeting.<sup>168</sup> Respondent Timothy Wales testified that he got on a call the next day and talked to  
16 Mr. Wight about the sales and what he was tasked with sharing with him.<sup>169</sup> Respondent Timothy  
17 Wales testified that his understanding for the call was to answer questions because Mr. Wight was a  
18 potential lender.<sup>170</sup> Respondent Timothy Wales described the conversation with Mr. Wight as neutral,  
19 cordial and business-like.<sup>171</sup> Respondent Timothy Wales stated that during the call, Mr. Wight wanted  
20 to understand what the sales pipeline was and what the product could do, how it can do it, and what  
21 Visionary was currently working on.<sup>172</sup> Respondent Timothy Wales also stated that he recalled Mr.

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23 <sup>162</sup> Tr. 494-495.

24 <sup>163</sup> Tr. 494: 18-23.

25 <sup>164</sup> Tr. 495.

26 <sup>165</sup> *Id.*

27 <sup>166</sup> Tr. 496.

28 <sup>167</sup> Tr. 431: 2-25.

<sup>168</sup> Tr. 496: 15-21.

<sup>169</sup> Tr. 432: 1-25; 439: 2-25.

<sup>170</sup> Tr. 497: 13-17.

<sup>171</sup> Tr. 432: 1-25.

<sup>172</sup> Tr. 443: 1-25.

1 Wight asking about \$120,000 that was due for development on the Reddy Ice project.<sup>173</sup> Respondent  
 2 Timothy Wales testified that he also discussed the Verizon and Sprint partnerships and sales pipeline.<sup>174</sup>  
 3 Respondent Timothy Wales testified that he did not discuss the Shaw/Cook deal because it was not  
 4 relevant.<sup>175</sup> During the course of the conversation, Respondent Timothy Wales stated that the  
 5 discussion turned to how can we all work together.<sup>176</sup> Respondent Timothy Wales also stated that  
 6 Respondent Stacey Wales listened to the call, but was in and out of the room while the call took place.<sup>177</sup>  
 7 Respondent Timothy Wales also stated that Mrs. Wight was on some of the calls with Mr. Wight before  
 8 the Wights invested.<sup>178</sup> Respondent Timothy Wales testified that “JW [Mr. Wight] drives the calls and  
 9 is the voice behind the family.”<sup>179</sup> Respondent Timothy Wales acknowledged that at the time of the  
 10 conference call, Visionary’s prospects were looking very good and that Visionary had just had one of  
 11 its best months for sales.<sup>180</sup>

12 Mr. Wight recalled participating in a second conference call with the Wights on July 20, 2011,  
 13 which was the day after Respondent Brauer sent an email to him and Respondent Stacey Wales stating  
 14 that he was going to meet with the Wights about a loan.<sup>181</sup> Respondent Timothy Wales testified that  
 15 he was involved in the phone call and discussed sales, and that the call ended with Mr. Wight stating  
 16 he was going to talk to his attorney about things.<sup>182</sup> Respondent Timothy Wales testified that in a  
 17 subsequent phone call Mr. Wight asked for 30 percent equity.<sup>183</sup> Mr. Wales testified that the Wights  
 18 “made an offer to them.”<sup>184</sup>

19 Respondent Timothy Wales disputes Mr. Wights’ assertion that the reason he invested was  
 20 because of the Shaw/Cook deal. Respondent Timothy Wales stated that the Reddy Ice project was  
 21 talked about, but that the Shaw/Cook deal was not discussed on the July 12 and July 20, 2011, phone  
 22

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23 <sup>173</sup> Tr. 443: 1-25.

24 <sup>174</sup> Tr. 499: 3-7.

25 <sup>175</sup> Tr. 499: 11-21.

26 <sup>176</sup> Tr. 432: 1-25; 498: 9-24.

27 <sup>177</sup> Tr. 440-441.

28 <sup>178</sup> Tr. 445: 3-10; 446: 2-19; 500:1-3.

<sup>179</sup> Tr. 444: 2-25.

<sup>180</sup> Tr. 443-444.

<sup>181</sup> Tr. 500: 4-25; Exh. W-24.

<sup>182</sup> Tr. 500: 4-25.

<sup>183</sup> Tr. 501: 1-5.

<sup>184</sup> Tr. 510: 509-510.

1 calls.<sup>185</sup> Respondent Timothy Wales stated that the Shaw/Cook deal was a topic at the board meeting  
2 on August 15, 2011, after Mr. Wight invested.<sup>186</sup>

3 Respondent Timothy Wales testified that prior to the Wights investing in Visionary, Mr. Wight  
4 had participated in sales calls for Visionary with Verizon, Reddy Ice, and other customers.<sup>187</sup>  
5 Respondent Timothy Wales described the calls Mr. Wight participated in with Reddy Ice as occurring  
6 every Friday, and that Mr. Wight wanted to “understand the sales and embed himself as part of the  
7 company before making a decision.”<sup>188</sup> Respondent Timothy Wales also testified that before Mr. Wight  
8 invested, he was given the written proposal for Reddy Ice that included the return on investment  
9 documents, which showed that Visionary had the potential to net \$9 million.<sup>189</sup> Respondent Timothy  
10 Wales also testified that before Mr. Wight invested he talked to one of the vendors that Visionary owed  
11 money to, GenX International.<sup>190</sup> Respondent Timothy Wales further testified that Mr. Wight also  
12 talked to another Visionary vendor by the name of Dundas to get a better understanding of all  
13 Visionary’s debt.<sup>191</sup> Respondent Timothy Wales testified that Mr. Wight made it mandatory to get in  
14 touch with all of these people before he invested.<sup>192</sup> Respondent Timothy Wales testified that on the  
15 same date that Mr. Wight made his investment in Visionary a wire went out to pay some of the debts  
16 because Mr. Wight was authorizing what was being paid, so he knew everything that was being paid  
17 for out with his money.<sup>193</sup>

18 Respondent Timothy Wales acknowledged that at the time when Respondent Brauer initially  
19 spoke to Mr. Wight about investing, or making a loan to Visionary, that he did not know what  
20 Respondent Brauer told Mr. Wight at that point.<sup>194</sup>

21 Respondent Timothy Wales acknowledged that the information given to the Wights did not  
22 include a written document that specifically summarized the investment risks.<sup>195</sup>

23 <sup>185</sup> Tr. 508: 9-24; 509.

24 <sup>186</sup> Tr. 511: 1-25; Exh. S-10.

25 <sup>187</sup> Tr. 434: 1-25; 502: 5-25; 503: 7-24; 504: 1-7; 504: 8-24; 505; 506.

26 <sup>188</sup> Tr. 434: 1-25.

27 <sup>189</sup> Tr. 513-514.

28 <sup>190</sup> Tr. 506: 12-25.

<sup>191</sup> *Id.*

<sup>192</sup> Tr. 507: 2-11.

<sup>193</sup> Tr. 508: 507-508.

<sup>194</sup> Tr. 435: 1-4.

<sup>195</sup> Tr. 449: 1-20.

Respondent Timothy Wales testified that at some point he and Respondent Stacey Wales were introduced to Messrs. Cano and De Las Casas.<sup>196</sup> Respondent Timothy Wales stated that the relationship with Messrs. Cano and De Las Casas started when they became customers of Visionary and purchased a license to sell the Fleetronix product.<sup>197</sup> Respondent Timothy Wales stated that Messrs. Cano and De Las Casas participated in the development and evolution of the Fleetronix product for use in Mexico.<sup>198</sup> Respondent Timothy Wales testified that Messrs. Cano and De Las Casas both worked out of the Visionary office when they were around and would make sales calls.<sup>199</sup> Respondent Timothy Wales described Messrs. Cano and De Las Casas as active participants in the business before they became shareholders.<sup>200</sup> Respondent Timothy Wales testified that he had a partnership with Messrs. Cano and De Las Casas.<sup>201</sup> Respondent Timothy Wales also testified that when he and Respondent Stacey Wales met Messrs. Cano and De Las Casas they were interested in equity from day one, but that the relationship built, and they all became really close.<sup>202</sup>

Respondent Timothy Wales testified that Messrs. Cano and De Las Casas were approved by him and Respondent Stacey Wales to receive corporate shares in Visionary.<sup>203</sup> Respondent Timothy Wales stated that Messrs. Cano and De Las Casas were like family and that both he and Respondent Stacey Wales communicated with them about becoming shareholders in Visionary.<sup>204</sup> Respondent Timothy Wales stated that Messrs. Cano's and De Las Casas' efforts were very important to the growth of the company.<sup>205</sup> He stated that Messrs. Cano and De Las Casas worked hard and helped both he and Respondent Stacey Wales.<sup>206</sup> Respondent Timothy Wales acknowledged that shares in the company were the only way to compensate Messrs. Cano and De Las Casas for their contributions to Visionary.<sup>207</sup>

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<sup>196</sup> Tr. 449-450.

<sup>197</sup> Tr. 491: 2-17.

<sup>198</sup> Tr. 491:18-25.

<sup>199</sup> *Id.*

<sup>200</sup> Tr. 492: 1- 24.

<sup>201</sup> Tr. 492: 1-24; Exh. W-30.

<sup>202</sup> Tr. 493:17-25.

<sup>203</sup> Tr. 450: 2-8.

<sup>204</sup> Tr. 450: 8-21.

<sup>205</sup> Tr. 452-453.

<sup>206</sup> *Id.*

<sup>207</sup> Tr. 452: 10-25.

Respondent Timothy Wales acknowledged that after all of the investors became board members they were all on the lookout for new opportunities and clients.<sup>208</sup> Respondent Timothy Wales testified that although they were on the lookout, nobody really brought anybody in.<sup>209</sup>

Respondent Timothy Wales acknowledged that Messrs. Shaw and Cook were considering an investment deal with Visionary.<sup>210</sup> Respondent Timothy Wales stated that Mr. Shaw and some other individuals put money into some type of fund and it was part of a larger fund and that Mr. Shaw was getting "a big payout."<sup>211</sup> Respondent Timothy Wales testified that the investment opportunity with Messrs. Shaw and Cook was not shared with the Wights until after they came on board because the Shaw/Cook deal was not a reality.<sup>212</sup> Respondent Timothy Wales stated that Respondent Brauer knew as much about the Shaw/Cook deal as he did in July 2011, which was that it was an on-going thing and that they didn't know if it would ever go anywhere.<sup>213</sup> Respondent Timothy Wales further testified that he assumed Respondent Brauer "shared barely anything with the Wights about the Shaw/Cook deal because he barely knew anything."<sup>214</sup>

Respondent Timothy Wales indicated that he could not recall if Respondent Brauer was aware of the commitment Messrs. Shaw and Cook had made to Visionary once they got their funding.<sup>215</sup> Respondent Timothy Wales testified that he, Respondent Stacey Wales, and Respondent Brauer were all skeptical that the Shaw/Cook deal would materialize because it went on for too long.<sup>216</sup>

Respondent Timothy Wales acknowledged that he had a friend named Neil who owned a helicopter company and he considered Neil a mentor and guide.<sup>217</sup> Respondent Timothy Wales testified that he would go to small groups and learn about business from a Christian standpoint and that Neil attended those meetings.<sup>218</sup> Respondent Timothy Wales acknowledged that he was open to the

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<sup>208</sup> Tr. 454-455.

<sup>209</sup> Tr. 455: 14-25.

<sup>210</sup> Tr. 472: 1-18.

<sup>211</sup> *Id.*

<sup>212</sup> Tr. 474:4-13.

<sup>213</sup> Tr. 475: 7-20.

<sup>214</sup> Tr. 475: 12-16.

<sup>215</sup> Tr. 475: 17-25.

<sup>216</sup> Tr. 476-477.

<sup>217</sup> Tr. 482: 20-25.

<sup>218</sup> Tr. 483.



possibility of Neil or anyone referring potential lenders or potential investors to Visionary.<sup>219</sup>  
Respondent Timothy Wales indicated that he may have asked Neil for a personal or business loan.<sup>220</sup>

**IV. The Parties' Positions**

**A. The Division's Position**

The Division alleges that Visionary's stock is a security within the Act and A.R.S. § 44-1801(26). The Division contends that Visionary's subscription agreements expressly identify, in Section 3.4 "Restricted Securities" that its stock are securities and are subject to the Act and state securities law. Further, the Division argues that all of Visionary's stock was offered and sold within or from Arizona, because Visionary's only office was located within Chandler, Arizona, and the Wights lived in Arizona at the time they invested.

The Division argues that the Wales Respondents offered or sold the stock in Visionary for value. The Division argues that under A.R.S. §44-1801(15) an offer to sell a security means any attempt to offer or dispose of a security for value. The Division contends that Respondent Stacey Wales sold Visionary stock to Messrs. Cano and De Las Casas and the Wights by executing contracts, namely subscription agreements, to dispose of the stock for value. Further, the Division alleges that Respondent Timothy Wales offered Visionary's stock to the Wights by asking them to invest and by attempting to dispose of Visionary's stock for value by telling the Wights about favorable sales projections to encourage them to invest.

The Division contends that Messrs. Cano and De Las Casas paid value for their stock even though their payments were not contemporaneous with the stock transactions. The Division asserts that Messrs. Cano and De Las Casas' subscription agreements specifically state, that "the shares are being offered in consideration of cash in the amount of \$113,250. . . which . . . has been paid by the Shareholder to Visionary." In support of its position, the Division points to testimony that Messrs. Cano and De Las Casas and the Wales Respondents all agreed that the amount of \$113,250 was an accurate approximation of the value that they contributed to Visionary.

The Division states that based on the Answer filed by the Wales Respondents in this matter,

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<sup>219</sup> Tr. 485: 9-16.

<sup>220</sup> Tr. 486.

1 neither were registered with the Commission as securities salesmen or dealers. Further, the Division  
2 asserts that Visionary's stock were not registered by the Commission.

3 The Division asserts that pursuant to A.R.S. §44-2033, the Wales have the burden to prove any  
4 exemption from registration. The Division argues that the Wales' failed to prove their assertion that  
5 the sale of Visionary's stock was exempt from registration under the Act. The Division asserts that  
6 under Arizona State laws, all exemption requirements must be strictly complied with.<sup>221</sup> The Division  
7 states that the Act exempts "[t]ransactions by an issuer not involving any public offering" (Non-Public  
8 Offering Exemption).<sup>222</sup> The Division states that although there is no Arizona authority on the meaning  
9 of the Non-Public Offering Exemption, A.R.S. §44-1844(A) (1) is identical to Section 4(a)(2) of the  
10 Act, and should be used as an interpretive guide for A.R.S. §44-1844.<sup>223</sup>

11 The Division asserts that the federal Non-Public Offering Exemption only applies to offerings  
12 where the offerees can "fend for themselves," such as the executive officers of the issuer, who do not  
13 need the protection of a securities registration statute.<sup>224</sup> Quoting from S.E.C. v. Murphy, the Division  
14 asserts "[a] court may only conclude that the investors do not need the protection [of the Act] if all of  
15 the offerees have relationships with the issuer affording them access to or the disclosure of the sort of  
16 information about the issuer that registration reveals."<sup>225</sup> The Division also asserts that under Murphy,  
17 the information required is "quite extensive" and includes accurate financial statements and  
18 consideration of the following relevant factors: 1) the number of offerees; 2) the sophistication of the  
19 offerees; 3) the size and manner of the offering; and 4) the relationship of the offerees to the issuer.<sup>226</sup>  
20 The Division points out that "[t]he party claiming the exemption must show that it is met not only with  
21 respect to each purchaser, but also with respect to each offeree."<sup>227</sup> The Division also states that "[t]he  
22 exact number and identity of all offerees must be produced."<sup>228</sup>

23 The Division argues that the hearing record does not support the Wales Respondents' assertion

24 <sup>221</sup> *State v. Baumann*, 125 Ariz. 404, 411 (1980).

25 <sup>222</sup> A.R.S. §44-1844(A)(1).

26 <sup>223</sup> See, Laws 196, Ch. 197, §11(C) (Legislature intends that court interpretations of substantially similar federal securities provisions be used as interpretive guide for the Act).

27 <sup>224</sup> *S.E.C. v. Ralston Purina Co.*, 346 U.S. 119, 125-126 (1953).

28 <sup>225</sup> *S.E.C. v. Murphy*, 626 F.2d 633, 647 (9<sup>th</sup> Cir. 1980).

<sup>226</sup> *Id.* at 644-645.

<sup>227</sup> *Id.* at 645.

<sup>228</sup> *Western Fed. Corp. v. Erickson*, 739 F.2d 1439, 1442 (9<sup>th</sup> Cir. 1984).

1 that the Non-Public Offering Exemption applies to the sale of Visionary's stock.<sup>229</sup> The Division  
2 contends that the hearing record does not establish the identity of all of Visionary's offerees or even  
3 the number of offerees. The Division points to the testimony that Messrs. Brauer, Cano, and De Las  
4 Casas were all looking for investors for Visionary and that there is no evidence identifying every  
5 potential investor who they solicited in their search.<sup>230</sup> In support of its assertion, the Division points  
6 out that Respondent Stacey Wales noted that when searching for new capital, Messrs. Cano and De Las  
7 Casas sometimes requested a Visionary document or marketing material to give to someone, but there  
8 was no testimony about who the potential investors were.<sup>231</sup> Further, the Division asserts that  
9 Respondent Brauer was supposed to use the CRM system to log contact with potential investors, but  
10 failed to use it, so the Wales Respondents had no way of knowing who those potential investors were.<sup>232</sup>  
11 The Division argues that because the Wales Respondents cannot prove the exact number and identity  
12 of all of these offerees, they cannot meet the burden of proving that the Non-Public Offering Exemption  
13 applies.<sup>233</sup>

14 The Division argues that even if the Wales Respondents could prove the prerequisite of proving  
15 the identity of all of offerees, the Wales Respondents failed to prove the four factors relevant to support  
16 an exemption.<sup>234</sup> Under factor one the number of offerees must be considered. The Division argues  
17 that in this case the record does not support an exemption due to the testimony that Messrs. Cano and  
18 De Las Casas sometimes requested a Visionary document or marketing material to give to someone,  
19 but there was no testimony about who the potential investors were, as well as testimony that Respondent  
20 Brauer failed to use the CRM system to track potential investors.<sup>235</sup>

21 The Division contends that the second factor, which relates to the sophistication of the offerees,  
22 is not supported by the record. The Division argues that although there is no evidence of the  
23 sophistication of the unknown offerees, there is evidence that Visionary did not know how  
24 sophisticated the actual investors were in terms of investment experience, and the Wight's investment

25 <sup>229</sup> Division Initial Brief at 12.

26 <sup>230</sup> Division Initial Brief at 13; Tr. 142: 12-14; S-28 p. 29: 20-22; p. 72: 6-10.

27 <sup>231</sup> Division Initial Brief at 13; Tr. 163: 6-19.

28 <sup>232</sup> Division Initial Brief at 13; Tr. 428: 5-429: 3.

<sup>233</sup> Division Initial Brief at 13.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

1 experience was "somewhat limited."<sup>236</sup>

2       Regarding, the third factor, which relates to the size and manner of the offering, the Division  
3 contends that the evidence weighs against the exemption. The Division argues that the size of the  
4 offering is unclear because Visionary sold \$526,000 in stock, but there is no evidence as to how much  
5 more Messrs. Brauer, Cano, and De Las Casas were seeking to raise with Visionary stock, including  
6 the large, but unspecified amount of the expected stock sale for the Shaw/Cook deal.<sup>237</sup> The Division  
7 also contends that the evidence that Visionary authorized Messrs. Wales, Brauer, Cano, and De Las  
8 Casas to seek investors without guidance or limitations on what methods they could use to find  
9 investors, weighs against the exemption.<sup>238</sup>

10       The Division states that the fourth factor, which is the relationship of the offerees to the issuer,  
11 does not support the exemption. The Division argues that although Messrs. Cano and De Las Casas  
12 had some relationship with Visionary, the relevant question is what relationship each offeree had with  
13 Visionary.<sup>239</sup> The Division asserts that the lack of guidance given to Messrs. Brauer, Cano, and De  
14 Las Casas about seeking investors suggests that many of the unidentified offerees probably had no  
15 relationship with Visionary.<sup>240</sup>

16       The Division also argues that the evidence shows offerees did not have the disclosure of the  
17 sort of information required under Murphy and federal law. The Division notes that a federal  
18 registration statement requires: 1) a written opinion of counsel about the legality of the offering; 2) a  
19 balance sheet certified by an independent or certified accountant; 3) a report of the remuneration to  
20 company officers for the prior year with projections for the next year; and 4) a profit and loss statement  
21 of the current year and two prior years.<sup>241</sup> The Division argues that Visionary's offerees did not receive  
22 the above documents. The Division contends that no evidence existed for a written opinion of counsel  
23 about the legality of the offering, a certified balance sheet, or that Visionary prepared any report on  
24 remuneration to company officers.<sup>242</sup> The Division contends that a profit and loss statement may have

25 <sup>236</sup> Division Initial Brief at 13.

26 <sup>237</sup> Division Initial Brief at 14; Tr. 220: 1-8.

27 <sup>238</sup> Division Initial Brief at 14; Tr. 158-160; Tr. 161-164.

28 <sup>239</sup> Division Initial Brief at 14.

<sup>240</sup> *Id.*

<sup>241</sup> Division Initial Brief at 14, citing 15 U.S.C. §§77 aa (14), (25), (26), and (29).

<sup>242</sup> Division Initial Brief at 14 and Tr. 220:1-8.

1 existed, but that the Wights did not get copies of it or any other financial documents before they  
2 invested.<sup>243</sup>

3 The Division argues that Visionary failed to provide information about the investment risks that  
4 registration would have revealed. The Division asserts that Visionary never prepared a written  
5 summary of risk disclosures, but merely included in the subscription agreements that the investment  
6 involved “substantial risks.”<sup>244</sup> In support of its position, the Division points to testimony of Mr. Wight  
7 that Messrs. Wales and Brauer did not discuss any risks with the Wights and that the Wights were to  
8 infer the risks on their own.<sup>245</sup>

9 The Division argues that the Non-Public Offering Exemption is an all or nothing exemption for  
10 the entire offering. The Division contends that even if Messrs. Cano and De Las Casas may have had  
11 access to more information about Visionary, as asserted by the Wales Respondents, the exemption still  
12 fails because the Wales Respondents failed to prove that the Wights and other offerees did not need the  
13 protection of securities registration.<sup>246</sup> The Division states that even if a particular investor is less in  
14 need of protection, the exemption does not apply to that investor if other offerees needed the  
15 protection.<sup>247</sup> The Division concludes that because the Wales Respondents did not prove that all of  
16 Visionary’s offerees and investors did not need the protection of securities registration, Visionary’s  
17 offering was not exempt.<sup>248</sup>

#### 18 **B. The Wales’ Position**

19 The Wales Respondents contend that the issuance of Visionary’s stock was exempt from  
20 registration requirements as outlined A.R.S. §44-1841 because the transaction was not a public offering  
21 as described in A.R.S. §44-1844(A)(1).<sup>249</sup> The Wales Respondents also contend that because the  
22 issuance of Visionary’s stock was not a public offering there was no requirement that the Wales  
23 Respondents register as salesman or dealers and therefore they were not in violation of A.R.S. §44-  
24

25 <sup>243</sup> Division Initial Brief at 14 and Tr. 28:25-29; 82:6-23; Exh. S-49 p. 25: 9-24.

26 <sup>244</sup> Division Initial Brief at 15. See also, Tr. 166-18; Tr. 10; Tr. 449: 2-10; Exh. S-5.

27 <sup>245</sup> Division Initial Brief at 15. See also, Tr. 166-167; Tr. 351-352.

28 <sup>246</sup> Division Initial Brief at 15.

<sup>247</sup> Division Initial Brief at 15 citing *McDaniel v. Compania Minera Mar de Cortes, Sociedad Anomino, Inc.*, 528 F.Supp. 152, 158 (D. Ariz. 1981).

<sup>248</sup> Division Initial Brief at 15.

<sup>249</sup> Wales Post-Hearing Brief at 1.



1 1842.

2 The Wales Respondents assert that there was only one stock sale to the Wights in exchange for  
3 \$300,000.<sup>250</sup> The Wales contend that the issuance of stock to Messrs. Cano and De Las Casas were  
4 gifts, there was no offer, and Messrs. Cano and De Las Casas were not required to pay any money in  
5 exchange for shares in Visionary.<sup>251</sup> The Wales Respondents argue that Visionary was not legally  
6 obligated to repay any money to Messrs. Cano and De Las Casas.<sup>252</sup>

7 The Wales Respondents contend that sale of stock to the Wights was not a public offering and  
8 exempt from registration. The Wales Respondents assert that under *S.E.C. v. Ralston*, an offeree must  
9 be able to “fend for themselves” and have access to, or disclosure of, the sort of, information about the  
10 issuer that registration would reveal.<sup>253</sup> The Wales Respondents argue that Mr. Wight had access to,  
11 and obtained, more information than would have been revealed in a prospectus for a registered security.  
12 The Wales Respondents contend that Mr. Wight was given access to everything, including Visionary’s  
13 balance sheet; financial records; customer calls; and creditors.<sup>254</sup> The Wales Respondents assert that  
14 not only could Mr. Wight fend for himself, but essentially caused Visionary to issue stock to somebody  
15 other than the Wales Respondents for the first time.<sup>255</sup>

16 The Wales Respondents argue that an analysis of the four factors set forth in *Murphy*, supports  
17 an exemption for the sale of stock to the Wights. The Wales Respondents contend that there was one  
18 offeree (the Wights); the offeree was a sophisticated business owner and salesman; the offeree  
19 determined the size of the offering; the offeree dictated the manner of the offering; and the issuer of  
20 the stock was no stranger to the offeree.<sup>256</sup> In support of their position, the Wales Respondents assert  
21 that Mr. Wight: sold them insurance and knew they had trouble paying their premiums; was familiar  
22 with Visionary’s product and the company’s potential market; investigated and verified the pipeline;  
23 and spoke with creditors.<sup>257</sup>

24  
25 <sup>250</sup> Wales Post-Hearing Brief at 5.

26 <sup>251</sup> Wales Post-Hearing Brief at 5.

27 <sup>252</sup> *Id.*

28 <sup>253</sup> Wales Post-Hearing Brief at 5 citing *S.E.C. v. Ralston Purina Co.*, 346 U.S. 119, 125-126 (1953).

<sup>254</sup> Wales Post-Hearing Brief at 5.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

1 The Wales Respondents dispute the Division's assertion that there was inconsistency between  
 2 the Wales' testimony during their examination under oath ("EUO") and at hearing. According to the  
 3 Wales Respondents, the Division asserts that during the Wales' EUO they failed to discuss the Wight's  
 4 due diligence investigations prior to investing.<sup>258</sup> The Wales Respondents contend that they did not  
 5 provide testimony on the Wight's due diligence investigation because the Division did not ask any  
 6 questions concerning those topics.<sup>259</sup> The Wales Respondents also dispute the Division's assertion that  
 7 the testimony Respondent Stacey Wales gave during her EUO regarding Respondent Brauer's initial  
 8 meeting with the Wights was inconsistent with her testimony at hearing.<sup>260</sup> The Wales Respondents  
 9 contend that during the EUO, Respondent Stacey Wales testified that the first meeting Respondent  
 10 Brauer had with the Wights was a discussion of the Company at a golf outing, and not the meeting in  
 11 the Wights' home on July 19, 2011.<sup>261</sup>

12 The Wales Respondents dispute the Division's allegations that Visionary failed to identify and  
 13 track offerees. The Wales Respondents assert that there was no need to track offerees because: 1) there  
 14 were no other offerees; 2) there is no evidence in the record that there were additional offerees; and 3)  
 15 there is no evidence of an organized effort to offer stock for sale to any outside party.<sup>262</sup> The Wales  
 16 Respondents also argue that in contrast with the evidence presented in the McDaniel case, where the  
 17 company was actively offering stock to third parties, there is no evidence in this case to that effect.<sup>263</sup>

18 The Wales Respondents argue that there is "testimonial bias" in the testimony given by both  
 19 the Mr. Wight and the Wales. The Wales Respondents allege that Mr. Wight wants the Commission  
 20 to help him get back his \$300,000 investment and the Wales Respondents don't want to be forced to  
 21 pay \$300,000 in restitution because they have lost their life savings on Visionary.<sup>264</sup> Further, the Wales  
 22 Respondents dispute Mr. Wight's assertion that the transaction was a stock purchase from the  
 23 beginning, and allege that the evidence in the record shows that the July 19, 2011, meeting was not to  
 24

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25 <sup>258</sup> Wales Post-Hearing Brief at 6.

26 <sup>259</sup> *Id.*

26 <sup>260</sup> *Id.*

27 <sup>261</sup> *Id.*

27 <sup>262</sup> *Id.*

27 <sup>263</sup> *Id.*

28 <sup>264</sup> *Id.* at 7.

offer or sell of stock, but to solicit a loan.<sup>265</sup> The Wales Respondents note that they anticipated collaborative evidence by Respondent Brauer regarding the details of meeting with the Wights on July 19, 2011, but were informed by counsel for Respondent Brauer that he would assert his Fifth Amendment rights and refuse to testify if subpoenaed.<sup>266</sup> The Wales Respondents argue that Respondent Brauer's refusal to testify was not related to matters addressed in the consent decree, but that Respondent Brauer was more concerned with possible criminal liability for his alleged role in the failure of Visionary.<sup>267</sup> The Wales Respondents contend that they did not have the benefit from the collaborative testimony of Respondent Brauer on how a loan solicitation morphed into a stock purchase.<sup>268</sup>

The Wales Respondents request that the Commission deny the relief requested by the Division and dismiss the case with no action taken against the Wales Respondents.

**C. The Division's Reply to the Respondents Wales' Closing Brief**

In its Reply Brief, the Division asserts that Visionary's stock sales and its efforts to find investors for loan agreements were all part of an integrated offering. The Division argues that the loan agreements that Visionary sought from individual potential investors are relevant to the integration analysis because the loan agreements were securities, namely investment contracts.<sup>269</sup>

The Division contends that the test articulated in *S.E.C. v. W. J. Howey Co.*, sets forth the factors used to determine an integrated offering.<sup>270</sup> The Division states that under *Howey*, the five factors to be considered to determine an integrated offering are: 1) whether the offers/sales were part of a single plan of financing; 2) whether the offer/sales involved issuance of the same class of securities; 3) whether the offers/sales were made at or about the same time; 4) whether the same type of consideration would have been received; and 5) whether the offers/sales were made for the same general purpose.<sup>271</sup>

The Division asserts that four out of the five factors under the *Howey* test are met, and therefore

<sup>265</sup> Wales Post-Hearing Brief at 7; W-24.

<sup>266</sup> Wales Post-Hearing Brief at 7.

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> Division Post-Hearing Reply Brief at 2.

<sup>270</sup> Division Post-Hearing Reply Brief at 2. *Nutek Information Systems, Inc. v. Ariz. Corp. Comm'n*, 194 Ariz. 104, 108 (Ct. App. 1999) citing *S.E.C. v. W. J. Howey Co.*, 328 U.S. 293 (1964).

<sup>271</sup> Division Post-Hearing Reply Brief at 2. See also *Nutek Information Systems, Inc. v. Ariz. Corp. Comm'n*, 194 Ariz. 104, 108 (Ct. App. 1999) citing *S.E.C. v. W. J. Howey Co.*, 328 U.S. 293 (1964).

1 supports a finding that the Wales Respondents' stock sales and loan agreements were an integrated  
 2 offering. Under factor one, the Division argues that Visionary sold its stock for the same reason it was  
 3 seeking loan agreements, which was to find funding to keep the business going because Visionary was  
 4 struggling to pay its office rent and employee salaries.<sup>272</sup> Further, the Division asserts that the stock  
 5 sale to the Wights was a direct continuation of this effort because the Wales believed Brauer was  
 6 soliciting the Wights for a bridge loan.<sup>273</sup> In analyzing the third factor, the Division argues that  
 7 Visionary's stock and loan agreements were being offered at the same time and that Visionary was  
 8 offering loan agreements, before, during and after July 2011, when it made its stock offers and sales.<sup>274</sup>  
 9 The Division asserts that the fourth factor applies because in both the stock and loan agreements, the  
 10 consideration for both was money.<sup>275</sup> Finally, the Division contends that the fifth factor applies because  
 11 the stock and loan agreements were offered for the same general purpose of funding Visionary's  
 12 operations.<sup>276</sup> The Division contends that although the facts in this case do not support the second  
 13 factor of the Howey test because the stock and loan agreements are not in the same class, based on  
 14 caselaw, one factor is not enough to prevent a finding of integration.<sup>277</sup>

15 The Division asserts that the loan agreements should be classified as securities because: 1) they  
 16 involved an investment of money in a common enterprise with the expectation of profits from the  
 17 managerial efforts of others;<sup>278</sup> 2) the loan agreement investors would have invested money by  
 18 providing it to Visionary, and the Wales Respondents considered them to be investments at the time;<sup>279</sup>  
 19 3) loan agreement investors would have been in a common enterprise with each other and the stock  
 20 investors because Visionary only had one bank account around the time of the sales in which all  
 21 investor's monies were pooled;<sup>280</sup> 4) loan agreement investors would have expected to profit from

23 <sup>272</sup> Division Post-Hearing Reply Brief at 3. See also, Tr. 136-137.

24 <sup>273</sup> Division Post-Hearing Reply Brief at 3. See also, Tr. 215-216.

25 <sup>274</sup> Division Reply Brief at 3; Tr. 137-138; Tr. 152-154; Tr. 458-459; and Exh. S-10.

26 <sup>275</sup> Division Reply Brief at 3; Exh. S-5; S-6; and S-7.

27 <sup>276</sup> Division Reply Brief at 3; Tr. 112: 20-25; Tr. 137: 10-14; and Tr. 458: 9-15.

28 <sup>277</sup> Division Reply Brief at 2 quoting, *Kunz v. S.E.C.*, 64 Fed.Appx. 659, 666-667 (10<sup>th</sup> Cir. 2003)(affirming S.E.C. order)(stating that the S.E.C. properly integrated a mortgage loan participation interest offering with note offering because the offerings were made simultaneously, offered for the same consideration, and offered for the same general purpose.

<sup>278</sup> Division Reply Brief at 2 and Tr. 383-384.

<sup>279</sup> Division Reply Brief at 2; Tr. 263; Tr. 383-384.

<sup>280</sup> Division Reply Brief at 2; Tr. 375-376.

1 interest payments from Visionary;<sup>281</sup> and 5) loan agreement investors would have relied on the  
 2 managerial efforts of others because they would not have had any management involvement in  
 3 Visionary.<sup>282</sup> Further, the Division argues that the bridge loan the Wales Respondents intended to offer  
 4 the Wights would have also been a loan agreement contract for the reasons stated above.<sup>283</sup>

5 The Division asserts that the Wales Respondents reliance on information given to them by  
 6 Respondent Brauer should not be considered because Respondent Brauer's statements about his  
 7 interactions with the Wights are not credible. In support of its position, the Division points to  
 8 statements made by Respondent Timothy Wales in his EUO stating that Brauer's statements regarding  
 9 the Wights were not credible;<sup>284</sup> that Respondent Brauer exaggerated about what Brauer told the Wights  
 10 about Visionary;<sup>285</sup> and that Respondent Brauer was good at tricking people especially regarding  
 11 securities and raising capital.<sup>286</sup>

12 The Division also asserts that the evidence in the case shows that Respondent Brauer  
 13 intentionally misrepresented his communications with the Wights by preparing the July 12, 2011,  
 14 spreadsheet showing an equity investment even though Respondent Brauer knew Respondent Stacey  
 15 Wales did not want new shareholders and that Respondent Brauer prepared an email on July 19, 2011,  
 16 claiming he was going to the Wight's to discuss a bridge loan, but based on the Mr. Wights' testimony,  
 17 Respondent Brauer solicited the Wights for a stock investment.<sup>287</sup> Likewise, the Division asserts that  
 18 the testimony by the Wales Respondents that the Wights were given access to Visionary's balance  
 19 sheets and all of Visionary's financial documents is based on statements made by Respondent Brauer,  
 20 and are not credible.<sup>288</sup>

21 The Division disputes the Wales Respondents' assertion that Mr. Wight's testimony that he  
 22 invested in Visionary based primarily on the Shaw/Cook deal is not credible. The Division points to  
 23 testimony given by Respondent Stacey Wales stating that that Messrs. Brauer and Wales were

24 <sup>281</sup> Division Reply Brief at 2; Tr. 383-384.

25 <sup>282</sup> Division Post-Hearing Reply Brief at 2; Tr. 383-384.

26 <sup>283</sup> Division Post-Hearing Reply Brief at 2.

27 <sup>284</sup> Division Reply Brief at 4; Exh. S-29 p. 113: 11-21.

28 <sup>285</sup> Division Reply Brief at 4; Exh. S-29 p. 114-115.

<sup>286</sup> Division Post-Hearing Reply Brief at 4; Exh. S-29 p. 114-115.

<sup>287</sup> Division Post-Hearing Reply Brief at 4; Tr. 549; Exh. W-28; Tr. 544-545; Exh. W-24; Tr. 215-216.

<sup>288</sup> Division Post-Hearing Reply Brief at 4-5; Tr. 120-121; Tr. 121-122; Tr. 28: 25-29; Tr. 5; Tr. 82: 6-23; Exh. S-49 p. 9-24.



1 “absolutely ecstatic” about the possibilities the Shaw/Cook deal could create, and that Respondent  
2 Stacey Wales testified that the Wales Respondents believed the Shaw/Cook deal would happen.<sup>289</sup> The  
3 Division asserts that these statements are consistent with Mr. Wight’s testimony that the primary reason  
4 he invested in Visionary was the Shaw/Cook deal.<sup>290</sup>

5 Last, the Division contends that the Wales Respondents’ assertion that they were not legally  
6 obligated to repay any money to Messrs. Cano and De Las Casas is incorrect. The Division asserts that  
7 testimony in the case shows that Messrs. Cano and De Las Casas “lent” money to Visionary and  
8 therefore created an obligation to repay the money.<sup>291</sup>

9 **V. Analysis and Resolution**

10 **A. Classification of Investments**

11 Pursuant to A.R.S. §44-1801(26), a security means “any note, stock, treasury stock, bond,  
12 commodity investment contract. . .”

13 The Division contends that the stock the Wales Respondents sold in Visionary were securities.  
14 The Wales Respondents do not dispute that the stock sold in Visionary are a security under the meaning  
15 of A.R.S. §44-1801(26).<sup>292</sup> Further, under A.R.S. §44-1801(26) stock are included within the statutory  
16 definition of a security. Therefore, based on the plain language contained in A.R.S. §44-1801(26)  
17 identifying any stock as a security as well as the language contained in the Subscription Agreements,  
18 we find that the stock in Visionary are securities.

19 **B. Non-Public Offering Exemption**

20 A.R.S. §44-1841(A) prohibits the sale of securities unless they have been registered, or exempt  
21 under A.R.S. §§44-1843 or sold in exempt transactions under A.R.S. §44-1844 . . .” Further, A.R.S.  
22 §44-2033, places the burden of proving the existence of any exemption on the party raising the defense.  
23 Pursuant to A.R.S. §44-1842, it unlawful for any dealer to sell or purchase or offer to sell or buy any  
24 securities, or for any salesman to sell or offer for sale any securities within or from the State of Arizona  
25 unless the dealer or salesman is registered. A.R.S. §44-1801(15) defines an offer to sell a security as  
26

27 <sup>289</sup> Division Post-Hearing Reply Brief at 5; Tr. 112-14-19; Tr. 241-242; Tr. 243-244.

<sup>290</sup> Division Post-Hearing Reply Brief at 5.

<sup>291</sup> Division Post-Hearing Reply Brief at 6; Exhs. S-5 and S-6.

<sup>292</sup> Wales Post-Hearing Brief at 1.

1 any attempt to offer or dispose of a security for value.

2 The Wales Respondents do not dispute that Visionary's stock was not registered as required  
3 under A.R.S. §44-1841(A),<sup>293</sup> but claim that the sale of the stock in Visionary was exempt from  
4 registration under A.R.S. §44-1844(A)(1) because the transaction was by an issuer not involving any  
5 public offering.<sup>294</sup> The Wales Respondents also argue that there was only one sale of stock and that it  
6 was to the Wights in exchange for \$300,000. The Wales Respondents argue that the shares given to  
7 Messrs. Cano and De Las Casas: were gifts; there was no offer; the investors were not obligated to pay  
8 any money in exchange for their shares; and Visionary was not obligated to repay any money paid by  
9 Messrs. Cano and De Las Casas.

10 S.E.C. v. Ralston, sets forth the standard for determining whether a transaction is a non-public  
11 offering.<sup>295</sup> Under Ralston, the offerees must be able to "fend for themselves" and have access to or the  
12 disclosure of the sort of information about the issuer that registration would reveal. Further, under S.E.  
13 C. v. Murphy, [t]he party claiming the exemption must show that it is met not only with respect to each  
14 purchaser, but also with respect to each offeree.<sup>296</sup>

15 The Wales Respondents argue, but fail to cite to the record, that: 1) the legal requirement set  
16 forth in Ralston falls short of the sort of information that Mr. Wight had access to; 2) Mr. Wight had  
17 access to and obtained more information than a prospectus for a registered security; 3) Mr. Wight  
18 "knew everything;" and 4) Mr. Wight was given Visionary's balance sheet and financial records.  
19 Further, the Wales Respondents also argue that under Murphy, an analysis of the facts in this case  
20 support a finding that the Non-Public Offering Exemption would apply to sale of stock to the Wights.<sup>297</sup>  
21 The Wales Respondents assert, but fail to cite to the record, that Mr. Wight: was the only offeree; was  
22 a sophisticated business owner and salesman; ultimately dictated the manner of the offering; and was  
23 no stranger to the issuer.

24 Here, we do not find persuasive the Wales Respondents' assertion that an analysis of the facts  
25

26 <sup>293</sup> The Division submitted into evidence the Certifications of Non-Registration for Visionary stock and for Respondent  
Brauer. See Exhibits S-1 and S-2.

27 <sup>294</sup> Wales Post-Hearing Brief at 1.

28 <sup>295</sup> Wales Post-Hearing Brief at 5 citing S.E.C. v. Ralston Purina Co., 346 U.S. 119, 125-126 (1953).

<sup>296</sup> See S.E.C. v. Murphy, 626 F.2d 633, 647 (9<sup>th</sup> Cir. 1980).

<sup>297</sup> See S.E.C. v. Murphy, 626 F.2d 633, 647 (9<sup>th</sup> Cir. 1980).

1 in this case under Ralston and Murphy establishes that the Non-Public Offering Exemption applies. In  
2 the instant case, the evidence in the record shows that the Wights did not receive a written summary of  
3 the investment risks. Further, although Messrs. Cano and De Las Casas may have had access to limited  
4 information related to Visionary, the record does not establish the extent of the information Messrs.  
5 Cano and De Las Casas had access to. The record also establishes that the Wales Respondents did not  
6 know the level of investment experience for the Wights, or Messrs. Cano, or De Las Casas prior to  
7 them becoming investors in Visionary. The record shows that Mr. Wight had not made an independent  
8 investment prior to investing in Visionary.

9 Likewise, under Murphy, the record does not establish that all offerees had the type of  
10 information required to establish that the Non-Public Offering Exemption applies. Murphy sets forth  
11 four factors to be used to determine the existence that the Non-Public Offering Exemption. Under the  
12 first factor, the number of offerees should be considered. The Court has held that while the number of  
13 offerees is to be considered, it is not decisive.<sup>298</sup> Here, the evidence shows Respondent Timothy Wales,  
14 Respondent Brauer, and Messrs. Cano and De Las Casas were all actively seeking investors and/or  
15 lenders for Visionary. The evidence also shows that the Wales Respondents offered shares in Visionary  
16 to Messrs. Shaw and Cook in exchange for future shares in the companies they were planning to set  
17 up. The evidence also shows that Messrs. Cano and De Las Casas sometimes requested documents  
18 and marketing materials to give to unknown offerees. Further, the evidence shows that Respondent  
19 Brauer failed to use the CRM system to log investors and the Wales Respondents did not have  
20 procedures in place to guide Messrs. Cano, De Las Casas, and Brauer on how to seek investors.  
21 Therefore, the Wales Respondents did not establish the actual number of offerees that were being  
22 sought as investors in Visionary.

23 The second Murphy factor is the sophistication of the offerees. The evidence shows that the  
24 Wales Respondents did not know the level of investment experience of the actual investors. Further,  
25 the Wales Respondents did not know the annual income, or net worth of Messrs. Cano, De Las Casas,  
26 Shaw, or Cook as well as the Wights. Based on the above facts, the Wales Respondents failed to meet  
27

28 <sup>298</sup> *S.E.C. v. Murphy*, 626 F.2d 633 (1980) citing *Doran v. Petroleum Management Corp.* supra. 545 F.2d at 901.

1 the burden of proof that the second Murphy factor supports the Non-Public Offering Exemption.

2 The third factor is the size and the manner of the offering. Based on the evidence discussed for  
3 factors one and two, we find that the Wales Respondents failed to establish the size and the manner of  
4 the offerings at subject here.

5 The Court in Murphy states that in considering the fourth factor, which is the relationship of  
6 the offerees to the issuer, “[a] court may only conclude that the investors do not need the protection of  
7 the Act if all of the offerees have a relationship with the issuer affording them access to or disclosure  
8 of the sort of information about the issuer that registration reveals.”<sup>299</sup> Here, the evidence shows that  
9 Messrs. Cano, Brauer, Wales, and De Las Casas were not given a process for seeking investors in  
10 Visionary. Further, the record shows that documents and marketing materials were given to Messrs.  
11 Cano and De Las Casas and that the recipients of those documents/materials were unknown. In  
12 addition, the evidence shows that Respondent Brauer failed to use the CRM system to log contacts with  
13 potential investors. Therefore, the Wales Respondents fail to meet the burden of proof that the fourth  
14 Murphy factor supports a finding that the Non-Public Exemption applies.

15 The Division asserts that the offerees did not have the information registration would provide.  
16 Further, Murphy requires that investors be provided with “accurate financial statements.” In  
17 compliance with federal registration law, the record of evidence fails to show that investors were given  
18 a written legal opinion of counsel regarding the legality of the offering, a certified balance sheet, a  
19 report of remuneration to company officers, or a written summary of investment risks. In addition, the  
20 evidence shows that the financial statements shown to the Wights by Respondent Brauer may not have  
21 been accurate. We also agree with the Division that although Messrs. Cano and De Las Casas may have  
22 had access to more information about Visionary than other offerees, under Murphy “even if a particular  
23 investor is less in need of protection the exemption does not apply to that investor if other offerees  
24 needed the protection.” Therefore, based on the above discussion, we find that the Wales Respondents  
25 did not meet the burden of proof required under A.R.S. §44-2033 to show that the Non-Public  
26 Exemption applies.

27  
28 <sup>299</sup> *S.E.C. v. Murphy*, 626 F.2d 633 (1980).

1 We do not find persuasive the Wales Respondents argument that the sale of Visionary's stock  
2 to the Wights and Messrs. Cano, and De Las Casas were separate from their efforts to seek other  
3 investors. Under Murphy, the Court stated that that Section 5 of the Act provides "that unless a  
4 registration statement is in effect, it is unlawful for any person to sell or offer to sell a security." Here,  
5 we have established that Visionary's stock is a security. In addition, the evidence shows the Wales  
6 Respondents sold shares of Visionary common stock to the Wights. Further, the record shows that the  
7 Wales Respondents offered shares of Visionary stock to Messrs. Cano, and De Las Casas. The record  
8 also establishes that Messrs. Brauer, Wales, Cano, and De Las Casas were all out seeking additional  
9 investors/lenders in Visionary. The evidence shows that the efforts to find additional investors/lenders  
10 was part of a single plan to finance the operations of Visionary and occurred during the same timeframe  
11 as the sale of stock to the Wights and offers made to Messrs. Cano and De Las Casas to become  
12 shareholders. Based on the above facts, we find that the sale of stock to the Wights, the offer for  
13 Messrs. Cano and De Las Casas to become shareholders, and the efforts to seek additional  
14 investors/lenders for Visionary were all part of one integrated offering.

15 Because we find that the facts described herein do not support a finding that the Non-Public  
16 Offering Exemption applies, we also find that the sale of Visionary's stock was in violation of A.R.S.  
17 §44-1841(A). Further, we find that because the Wales Respondents were not registered as salesmen  
18 or dealers at the time of the relevant transactions, their actions constitute a violation of A.R.S. §44-  
19 1842.

20 Having considered the entire record herein and being fully advised in the premises, the  
21 Commission finds, concludes, and orders that:

### 22 FINDINGS OF FACT

23 1. Visionary is a defunct corporation that was organized under the laws of Arizona.  
24 Visionary was in operation from April 30, 2007, to October 7, 2015.<sup>300</sup>

25 2. At all relevant times, Visionary was headquartered in Chandler, Arizona. Visionary  
26 specialized in cloud-based fleet management solutions and did business under the name Fleetronix.<sup>301</sup>

27  
28 <sup>300</sup> Answer Wales Respondents at 1.

<sup>301</sup> Id.



3. Visionary was never registered by the Commission as a securities salesman or dealer.<sup>302</sup>

4. At all relevant times, Stacy Wales and Timothy John Wales were married, living in Arizona, and acting for their own benefit and/or in furtherance of their marital community.<sup>303</sup>

5. Stacey Wales served as Visionary's president and owned at least 51 percent of Visionary's stock. Timothy John Wales served as Visionary's vice-president.<sup>304</sup>

6. Respondent Stacey Wales has not been registered by the Commission as a securities salesman or dealer.<sup>305</sup>

7. Respondent Timothy John Wales has not been registered by the Commission as a securities salesman or dealer.<sup>306</sup>

8. Robert Brauer is a married man who was a resident of Arizona from at least December 2010 to May 2012. Robert Brauer served as CFO for Visionary from December 2010 to May 2012.<sup>307</sup>

9. Respondent Spouse Melissa Brauer, at all relevant times, has been the spouse of Respondent Robert Brauer.<sup>308</sup> Respondent Spouse Melissa Brauer is joined in this action under A.R.S. §44-2031(C) solely for purposes of determining the liability of the marital community.<sup>309</sup>

10. Respondent Robert Brauer has not been registered by the Commission as a securities salesman or dealer.<sup>310</sup>

11. At some point, during the relevant time periods, the Wales Respondents were introduced to Javier Cano and Jorge De La Casas who became customers of Fleetronix.<sup>311</sup> Messrs. Cano and De Las Casas had a license to sell Fleetronix software.<sup>312</sup> The Wales Respondents became friends with Messrs. Cano and De Las Casas.<sup>313</sup>

12. In July 2011, Messrs. Cano and De Las Casas became shareholders in Visionary.<sup>314</sup>

<sup>302</sup> Answer Wales Respondents at 1.

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> Answer Brauer Respondents at 2.

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> Answer Wales Respondents at 1.

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

1        13.     John W. Wight and Tammi Wight (the Wights), a married couple, invested in Visionary  
2 stock.<sup>315</sup>

3        14.     Respondent Robert Brauer was friends with the Wights.<sup>316</sup>

4        15.     Respondent Robert Brauer met with the Wights about investing in Visionary.<sup>317</sup>

5        16.     The Wales Respondents participated in several phone calls with the Wights.<sup>318</sup>

6        17.     In July 2011, the Wights invested \$300,000 and received 25 percent of Visionary's  
7 common stock.<sup>319</sup> Tammi Wight signed a subscription agreement for the stock purchase dated July 27,  
8 2011, and Respondent Stacey Wales signed the subscription agreement on behalf of Visionary.<sup>320</sup>  
9 Visionary also issued a stock certificate to Tammi Wight signed by Respondent Stacey Wales and dated  
10 July 29, 2011.<sup>321</sup>

11       18.     Tammi Wight signed the investors' subscription agreement for the Wights' stock  
12 purchase and Stacey Wales signed the subscription agreements on behalf of Visionary; therefore, the  
13 Wales Respondents offered and sold unregistered securities in and from Arizona in violation of A.R.S.  
14 §44-1841. Neither Respondent Timothy Wales nor Respondent Stacey Wales were registered as a  
15 dealer or salesman when offering the unregistered securities in violation of A.R.S. §44-1842. The  
16 Wales Respondents each offered and sold unregistered securities in and from Arizona in the form of  
17 common stock in Visionary three (3) times, raising a total of \$526,500.

18       19.     The Wales Respondents were interested in finding other investors for Visionary,  
19 including family and friends.<sup>322</sup>

20       20.     Due to a lack of funds, Visionary eventually defaulted on a secured commercial loan  
21 and all of Visionary's assets were seized.<sup>323</sup>

22       21.     The Wales Respondents did not know the net worth or income of the investors to qualify  
23

24       <sup>315</sup> Answer Wales Respondents at 2.

25       <sup>316</sup> *Id.*

26       <sup>317</sup> Answer Brauer Respondents at 2.

27       <sup>318</sup> Answer Wales Respondents at 2.

28       <sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

1 them as accredited investors at the time they invested.<sup>324</sup>

2 22. The Wights did not receive any documents describing Visionary before they invested in  
3 the Company.<sup>325</sup>

4 23. To date, none of the investors have received any interest payments or any refund of their  
5 principal investments.<sup>326</sup>

6 24. On May 22, 2017, the Commission issued Decision No. 76077, approving an Order to  
7 Cease and Desist and Order for Administrative Penalties and Consent to Same by Respondents Robert  
8 Brauer and Melissa Brauer.

9 25. On May 22, 2017, the Commission issued Decision No. 76078, approving an Order to  
10 Cease and Desist, Order of Restitution, and Order for Administrative Penalties for Respondent  
11 Visionary Business Works, Inc., jointly and severally with all Respondents against whom orders are  
12 entered under this docket, to pay restitution in the principal amount of \$526,500, plus interest in the  
13 amount of \$304,544.79 for interest that has accrued from the dates of the purchase to May 9, 2017.

14 26. The findings of fact are based upon the Discussion above, and that discussion is also  
15 incorporated herein.

#### 16 CONCLUSIONS OF LAW

17 1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona  
18 Constitution and A.R.S. §44-1801, *et. seq.*

19 2. Within or from Arizona, the Wales Respondents offered and sold securities, within the  
20 meaning of A.R.S. §44-1801.

21 3. The Respondent Wales failed to meet their burden of proof pursuant to A.R.S. §44-2033  
22 to establish that the securities offered and sold herein were exempt from regulation under the Act.

23 4. The Wales Respondents violated A.R.S. §44-1841 by offering and selling securities that  
24 were neither registered nor exempt from registration.

25 5. The Wales Respondents violated A.R.S. §44-1842 by offering and selling securities  
26 while not registered as dealers or salesmen.

27 <sup>324</sup> Tr. 97:1-25; Tr. 98:1-25; Tr. 126:14-17; Tr. 128: 17-21; Tr. 131: 2-13.

28 <sup>325</sup> Tr. 28: 25; 29: 1-5; Tr. 449:1-20.

<sup>326</sup> Answer Wales Respondents at 2.

1           6.       The conduct of the Wales Respondents constitutes grounds for a cease and desist order  
2 pursuant to A.R.S. §44-2032.

3           7.       The conduct of the Wales Respondents constitutes grounds for an order of restitution  
4 pursuant to A.R.S. §44-2032 and A.A.C. R14-4-308, for which the marital communities of  
5 Respondents Wales should be jointly and severally liable, subject to the limitations of A.R.S. §25-215.

6           8.       The conduct of the Wales Respondents constitutes grounds to order administrative  
7 penalties pursuant to A.R.S. §44-2036, for which the marital communities of the Wales Respondents,  
8 should be jointly and severally liable, subject to the limitations of A.R.S. §25-215.

9                               **ORDER**

10           IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under  
11 A.R.S. §44-2032, Respondents Stacey Wales and Timothy John Wales shall cease and desist from their  
12 actions, as described above, in violation of A.R.S. §§44-1841 and 44-1842.

13           IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
14 A.R.S. §44-2032, Respondents Stacey Wales and Timothy John Wales shall jointly and severally pay  
15 restitution in the amount of \$526,500, plus pre-judgment interest from July 27, 2011 (pursuant to  
16 A.R.S. §44-1201), payable to the Arizona Corporation Commission within 90 days of the effective date  
17 of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308, subject to legal setoffs  
18 by the Respondents and confirmed by the Director of Securities.

19           IT IS FURTHER ORDERED that all ordered restitution shall be deposited into an interest-  
20 bearing account(s), if appropriate, until distributions are made.

21           IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the  
22 lesser of 10 percent per annum, or at a rate per annum that is equal to one percent plus the prime rate  
23 as published by the Board of Governors of the Federal Reserve System in Statistical Release H.15, or  
24 any publication that may supersede it, on the date that the judgment is entered.

25           IT IS FURTHER ORDERED that the Commission shall disburse the restitution funds on a pro  
26 rata basis to the investors shown on the records of the Commission. Any restitution funds that the  
27 Commission cannot disburse because an investor refuses to accept such payment, or any restitution  
28 funds that cannot be disbursed to an investor because the investor is deceased and the Commission

1 cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at  
2 the time of distribution, shall be disbursed on a pro rata basis to the remaining investors shown on the  
3 records of the Commission. Any funds that the Commission determines that it is unable to, or cannot  
4 feasibly, disburse shall be transferred to the general fund of the State of Arizona.

5 IT IS FURTHER ORDERED that Respondents Stacey Wales and Timothy John Wales,  
6 individually, and the marital community of Stacey Wales and Timothy John Wales, jointly and  
7 severally shall each pay to the State of Arizona administrative penalties in the amount of \$15,000 for  
8 multiple violations of the registration provisions of the Securities Act, pursuant to A.R.S. §§44-2036  
9 and 25-215. Said administrative penalties shall be payable by either cashier's check or money order  
10 payable to "the State of Arizona" and presented to the Arizona Corporation Commission for deposit in  
11 the general fund for the State of Arizona.

12 IT IS FURTHER ORDERED that the payment obligations for these administrative penalties  
13 shall be subordinate to the restitution obligations ordered herein and shall become immediately due and  
14 payable only after restitution payments have been paid in full or upon Respondent's default with respect  
15 to Respondents' restitution obligations.

16 IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalties  
17 ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of ten percent per  
18 annum or at a rate per annum that is equal to one percent plus the prime rate as published by the Board  
19 of Governors of the Federal Reserve System in Statistical Release H.15, or any publication that may  
20 supersede it, on the date that the judgment is entered, may be deemed in default and shall be  
21 immediately due and payable, without further notice.

22 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Decision,  
23 any outstanding balance shall be in default and shall be immediately due and payable without notice or  
24 demand. The acceptance of any partial or late payment by the Commission is not a waiver of default  
25 by the Commission.

26 IT IS FURTHER ORDERED that the default shall render Respondents liable to the  
27 Commission for its cost of collection and interest at the maximum legal rate.

28 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Decision,



the Commission may bring further legal proceeding against the Respondents including application to the Superior Court for an order of contempt.

IT IS FURTHER ORDERED that pursuant to A.R.S. §44-1974, upon application, the Commission may grant a rehearing of this Decision. The application must be received by the Commission at its offices within twenty (20) calendar days after the entry of this Decision. Unless otherwise ordered, filing an application for rehearing does not stay this Decision. If the Commission does not grant a rehearing within twenty (20) calendar days after filing the application, the application is considered to be denied. No additional notice will be given of such denial.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

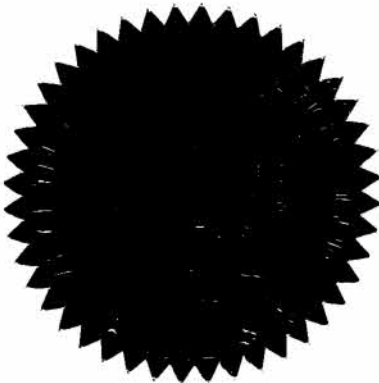
  
CHAIRMAN FORESE

  
COMMISSIONER DUNN

  
COMMISSIONER TOBIN

  
COMMISSIONER OLSON

  
COMMISSIONER BURNS



IN WITNESS WHEREOF, I, TED VOGT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 22<sup>nd</sup> day of May 2018.

  
TED VOGT  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
YBK/rt

1 SERVICE LIST FOR:

VISIONARY BUSINESS WORKS, INC., D/B/A  
FLEETRONIX, ROBERT BRIAN BRAUER AND  
MELISSA BRAUER, AND TIMOTHY JOHN WALES  
AND STACEY WALES

4 DOCKET NO.:

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16 **Consented to Service by Email**